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REPORT

OF A SELECT COMMITTEE OF

THE LEGISLATIVE ASSEMBLY

OF THE

PROVINCE OF KEWAYDIN

UPON

THE BOUNDARIES OF THE ADJOINING
PROVINCE OF ONTARIO.

WITH AN APPENDIX CONTAINING THE EVIDENCE.

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WITHOUT PERMISSION OF THE LEGISLATURE.

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PUBLISHER'S PREFACE.

The important document printed in the following pages relates to a subject of more interest to the neighbouring provinces on the east than to citizens of this province. To us it is a matter of speculative interest; to them it is a burning question. Orators at the hustings, and on the stump, and able editors in the daily press contribute masses of material to feed the flame. Peace officers of Ontario have been imprisoned in the jails of Manitoba on the charge of rioting in the disputed territory. Kewaydin alone is calm, waiting for the strife to cease. Although it is her boundaries over which the two quarrelsome provinces are fighting, Kewaydin, secure in her confidence in the ultimate triumph of right, preserves an attitude of majestic repose. She is not even in haste to publish the very able report of the special committee of her representatives. In order to get it before the public it had to be surreptitiously obtained.

The committee was selected from among the ablest members of the House. These far Northern Provinces seem to have lost some democratic prejudices, and have adopted the most recently approved scientific theories of heredity. Consequently, upon an inquiry so extended as this has turned out to be—when the literature relating to it equals in bulk a Chinese Encyclopædia—when the gossip of London clubs one hundred years ago, the reports of missionaries, the letters of public and private persons, the commissions of Governors, the Orders of Councils and the Statutes of Parliaments are all thrown in together, the House selected those of its members who might be supposed to inherit the most extensive acquaintance on all possible subjects, and the greatest inherent ability to resist the kaleidoscopic effect which the turning round suddenly of so much learned matter seems to have had upon the heads of many in other provinces. Readers will not therefore be surprised to meet with names the most distinguished in letters. The pursuits of literature have, alas, been in all ages unremunerative, and the heirs of great writers are often to be found seeking their fortunes in the

youngest provinces. If the House had required a poem or a drama, the member chosen as chairman might have been another, but, as the inquiry was largely geographical, the descendant of Cosmas Indicopleustes could not be overlooked. Even the Sieur de Temiscamangue, with the grace inherited from ancient lineage, waived his claims. Mr. Cosmas, being of Greek extraction, was not obnoxious to the reproach of being French or English. The surreptitious publication of such a document as this may, perhaps, be accounted for by the presence on the committee of Mr. Franklin, whose illustrious ancestor was a practical printer, and held peculiar views about the use to be made of private papers.

The committee, as is proper in a country where the thirst for representation rises to the dignity of a mania, represented all the nationalities in Kewaydin. Mr. Confucius had not at the time arrived in the province. All the parallels of latitude and meridians of longitude were also represented, as far as possible. In a large part of the province the only settlements are the beaver towns, the wise little inhabitants of which objected to the introduction of the "caucus" and the "stump" into their hitherto peaceful abodes, where stumping had always meant practical and useful work in the forest.

With these few explanatory remarks, necessary, he thinks, in a publication of so unusual a character, this important document is submitted to the consideration of the nineteen nationalities in the census of—the publisher had almost said "this Canada of *ours*," but there are no Canadians in it, and the question arises *of whose*? The publisher submits it then to the consideration of the eleven Provinces of the Dominion, and to the be-nationalized people who dwell in them; whether they be Prince Edward Islanders, Saskatchewaners, Alberters, Kewaydiners, Ontarians, Quebecers, Athabascans or Assiniboians, of all nations and tongues, whether they belong to the *rouge* or *bleu* varieties of these species, in whatsoever sectarian sub-section it may please them to classify themselves.

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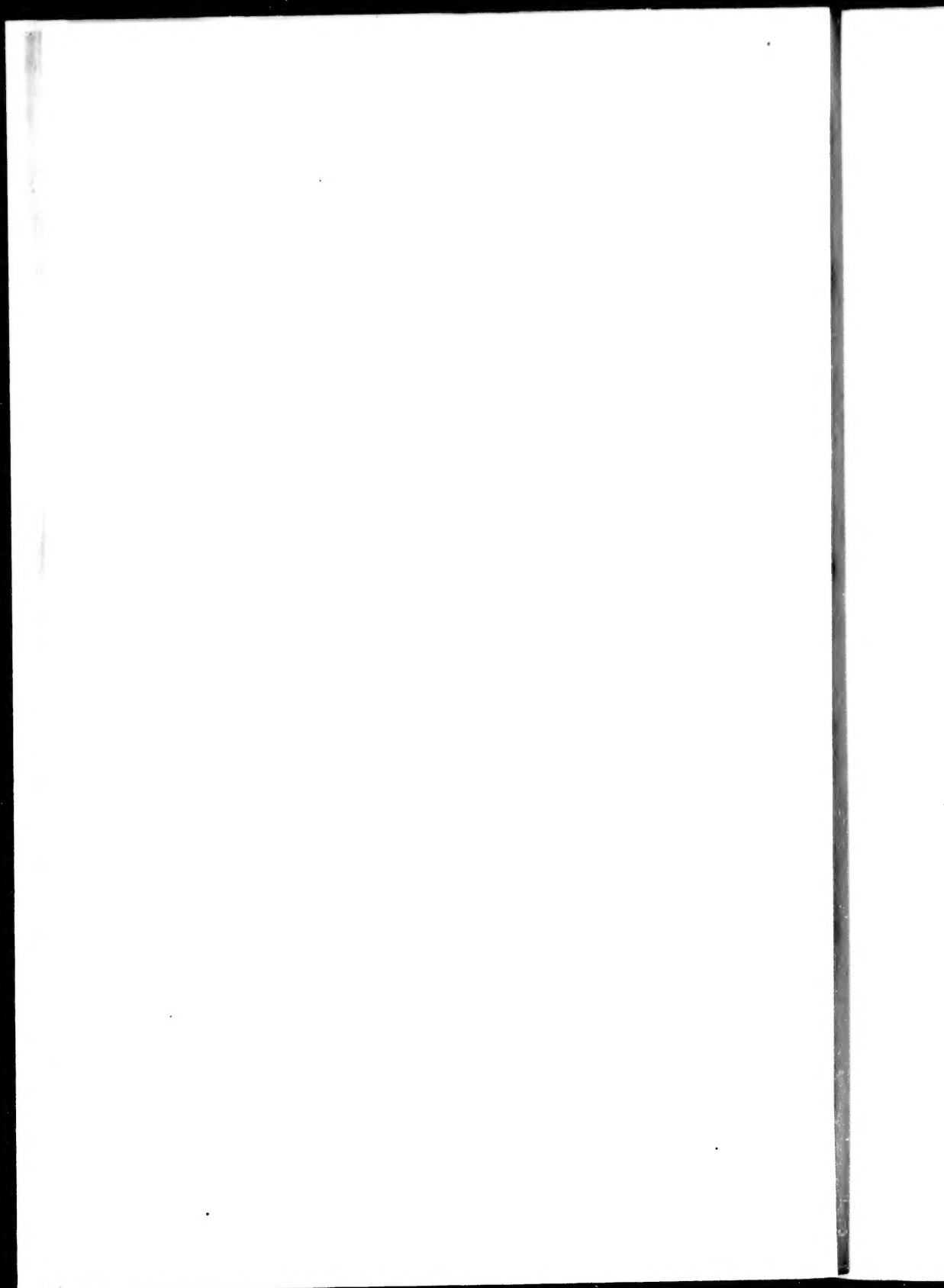
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MAP

By M. Sanson d'Abbeville showing the Northern Boundary
of New France in the year 1656.



LEGISLATIVE ASSEMBLY,
Committee Room No. 1,
KATCHEWAN, May 1st, 1883.

PRESENT :

Mr. COSMAS, *Chairman,*

" SHAKESPEARE,

" OSSIAN,

" MILTON,

" BERGHAUS,

" THIERS,

" BACON,

" SHERIDAN,

" THIERRY,

" FRANKLIN,

The Hon. RAOUL PERSONNE DE TEMISCAMANGUE.

REPORT.

The Select Committee appointed by your Honourable House to inquire into the Boundaries of the adjoining provinces, beg to submit the following :—

REPORT.

That your Committee have carefully considered all the Documents and Evidence printed in the Report of the Select Committee of the House of Commons in 1880, (hereafter called Dominion Report), and the volume of Documents published by the Ontario Government in 1882, (hereafter called Ontario Boundary Documents), and also the Report of the Hon. David Mills, Special Commissioner of the Ontario Government, made to that Government and

published in 1873. They have also considered the Award of the Arbitrators of 1878 and the grounds upon which it is asserted to rest, and, in addition, have made researches and obtained evidence in other quarters.

Although, in the course of this inquiry, their duty has imposed upon them the necessity of criticising the conclusions arrived at by their predecessors in these researches, they do so with all possible respect for the undoubted ability and high position, not only of the arbitrators, but also of those who have given evidence in this matter, or who have argued upon the opposing sides. They think that the case for Ontario was exceptionally well prepared. The books printed on that side were well compiled and suitably printed. The volume published by the House of Commons (Dominion Report) is lacking in those requisites which make a book lucid in arrangement or convenient for reference.

The case, in the opinion of your Committee, was overlaid with an enormous mass of extraneous matter, by which the real issues were obscured. The numerous irrelevant documents and private letters given — the elaborate excursus into non-essential points of contemporary history — and the mass of conjectural intentions and wishes attributed to the persons who drew up the documents cited, have a very confusing effect upon the minds of non-professional men. The lawyers and surveyors, for the most part, were able to perceive those things which really bore upon the question; but it became evident to your Committee that many of the laymen who had to do with the case were interpreting Acts of Parliament and public documents, which bore their meaning upon the surface, by conjectures as to what was passing in the minds of private members of the Parliaments at the times these enactments were made. The intentions of Parliament can only be inferred from the words of a Statute, not from the private letters of single members, nor from a private report of the debate published sixty years subsequently. One

fact will outweigh a volume of possibilities, or even of probabilities, and your Committee have therefore little hesitation in putting aside extracts from the letters of Mr. Burke and Mr. Franklin; not only because they cannot interpret an Act of Parliament, but because other private letters and opinions might be cited upon the opposite side and the discussion spend itself upon side issues.

From the facts stated in evidence by Mr. Cavendish (App. B) it would seem that the proceedings of the Arbitrators were more hurried than was becoming to the importance of the question. Your Committee think that more patience in listening to both sides, and more deliberation in arriving at a conclusion would have modified the award. In reply, it has been stated that the arbitrators formed their opinions separately upon the factums, and when they met they found their opinions coincided. Such a method of arriving at a decision in a case of importance involving much detail, scarcely recommends itself, if it involves any impatience of the advocacy by counsel of opposite views. A case ought not to be judged before it is fully heard.

From the evidence of the same gentleman, your Committee are of opinion that the matter submitted to arbitration was the discovery of true legal boundaries, not the allotting of conventional boundaries. That the boundary found was conventional, appears in the evidence of the Surveyor General, (App. C) and although the grounds of the award are not given in the award itself, they are clearly indicated in the lecture, by one of the arbitrators, given in the "Ontario Boundary Documents." Not only is the Albany river admitted to be an assumed convenient boundary, but the shifting of the due North line westward from the source of the Mississippi to the North-West angle of the Lake of the Woods demonstrates that the Arbitrators did not confine themselves to the question submitted to them, but added, for convenience sake, to what they stated to be the Western boundary in their view of the Act of 1774.

In the same lecture are given the grounds of the award. These are not stated in so many words in one passage, but, on page 422, of the Ontario Boundary Documents, we find that the North-West angle of Lake of the Woods was selected as the point of departure of the Western boundary to conform with the Treaties of 1783 and 1794 with the United States. The Eastern point of the Northern boundary was fixed on the *shore* of Hudson's Bay because the Proclamation of 1791 placed it at the *Boundary* of Hudson's Bay (p. 423). Then (p. 430) having fixed these two points, they were strongly urged by Col. Dennis to connect them by a natural boundary, and, "being aware that the Hudson's Bay Company had formerly considered the Albany river a satisfactory boundary," they adopted it as the connecting line.

Before entering upon the question strictly of the Boundaries, your Committee desired to make up their minds as to the value of the mass of Documents issuing from the Crown as Executive ; such as Commissions, Instructions, Orders in Council, Proclamations. These were much insisted on in the Ontario case, especially by the laymen, and very startling propositions were laid down by the Hon. David Mills concerning the prerogative powers of the Crown. He did not, however, perceive that the circumstances of the old colonies of England, settled under Royal Charters, were totally different from those of a foreign country like Canada, conquered by the armies of England, and dealt with by the Parliament of England, both as to boundaries and government. The basis of their political constitutions was different, and no safe induction can be made from one to the other. At the settlement by Statute of 1774 of the government of the Province of Quebec, Parliament extended over a definite area a code of laws foreign to English ideas, and recognised a form of religion upon which penal laws in England were heavily pressing. By extending the boundaries of the Province, the King would have extended these laws to adjacent territories. Be-

yond question the jurisdiction of the officer, representing the King may be extended by commission over the whole area of British territory in America, and he will represent the King in each section *pro tanto* in so far as the constituted laws of each section may permit; but the boundaries laid down by King, Lords and Commons cannot (any more than the laws) be altered by the King alone. Upon this point, your Committee would refer to the evidence of the Chief Justice (App. A); they would, however, remark that if Royal Commissions have the potency attributed to them, the latest Commission would appear to limit the boundary of Ontario at the Sault Ste. Marie on the West. The arbitrators were not misled by false general notions upon this point, and took into their consideration only one Commission—that of 1791—which was granted under peculiar circumstances non-existent in regard to the others. Your Committee have had therefore no hesitation in dismissing as irrelevant all the mass of Instructions, Commissions and Proclamations, other than those of 1791, and they cannot refrain from expressing their wonder that so many well-informed men have suffered themselves to be misled in matters which are elementary in public law.

It appeared also, from the lecture above referred to, that the Arbitrators took into their purview the treaties between England and the United States, concerning the boundaries between the British Possessions and those of the latter power. In the opinion of your Committee these treaties were irrelevant to the matter in hand. The parties to the treaties were Great Britain and the United States. The matter in dispute was the boundary between the territories subject to these two paramount powers, not the boundaries between the subdivisions of the respective territories. This latter is clearly a matter of municipal, and not of international arrangement. Nor can any pretensions or arguments put forward at the time of negotiation be of any avail to modify the plain meaning of a Statute regard-

ing internal boundaries of Provinces on the one side, as of States upon the other side, of the International line.

These preliminary considerations open the way to a clearer appreciation of the documents essential in this case. These your Committee venture to think are very few in number; and they are those given in the evidence of the Attorney-General at App. D, viz:

1. The Statute of 1774.
2. The Statute of 1791.
3. The Executive Documents purporting to be issued under the authority of the Statute of 1791, viz:
 - a. Order in Council
 - b. Commission.
 - c. Instructions.
 - d. Proclamation.

Within the compass of these few papers the description of the boundaries of Canada must be sought. All other matter is irrelevant. Moreover, inasmuch as the Statute of 1791 made no mention of boundaries, it may be eliminated from the present discussion, and the inquiry is narrowed down to the Statute of 1774 and the Executive Documents *a, b, c* and *d*; but it must be remembered that the Statute of 1791 contemplated only a state of affairs resulting upon a *division* not an *extension* of the Province of Quebec.

Upon this present part of the question, the Statute of 1774 is abundantly clear. It took into its purview the Province of Quebec as erected by the Crown out of the conquered territory of Canada, and it added to it certain territory specified; and declared that the certain territory so annexed should form part of the Province of Quebec *during the King's pleasure*. The Province, so constituted, was limited as to *extension* by the boundaries recited. The Crown could not add to it, otherwise the boundaries of the neighbouring colonies stood in danger; but it was expressly provided that the Crown might *reduce* the Province to its old limits; for the territory then annexed.

was so annexed *during the pleasure* of the King. The Parliament thus took the matter of boundaries out of the King's prerogative as regards *extension* and limited the bounds within which the French laws and the Roman Catholic religion were established.

Considering then this expression "during the King's pleasure" two questions arise.

1. Had the King the power to *extend* the limits fixed by Statute ?

2. Did the King purport to do so ?

Your Committee would refer to the evidence of the Attorney-General (App. D) for a full discussion of the second head. They are of opinion that in theory the Crown was powerless to extend the boundaries, and that in fact the Crown never pretended or intended to do so.

There is no fallacy greater than to suppose that a mere verbal discrepancy, an evident clerical or administrative error, occurring in the last document of a series, based one upon another, can have any effect in modifying the antecedent documents. Such a supposition is to reverse the order of things, and to give legislative authority to an administrative officer. The arbitrators, in adopting the language of General Clarke when it varied from the Commission, have made General Clarke extend the boundary of the Province of Quebec beyond the Royal Commission, beyond the Royal Instructions, beyond the Order in Council, beyond the Statute of 1774. They have interpreted the antecedent and authoritative documents by the mere administrative document, and permitted General Clarke, or his secretary, to adopt words of his own and extend the boundaries of Quebec beyond the intentions of the King and the limits fixed by Parliament. Your Committee do not think it possible that General Clarke could extend the Province which the King and Parliament intended merely to divide. Analysis of these documents are given in detail in the Attorney-General's evidence (App. D) to which

your Committee beg to invite the special attention of your Honourable House.

The true and lawful boundaries of the former Province of Quebec must be sought in the Statute of 1774, and in that alone. Your Committee are of opinion that no reasonable doubt can exist upon this point; and no doubt did exist upon it until the dust raised in the discussion with the Hudson's Bay Company obscured the essential points of the question. In that Statute they are laid down as follows:—

“ Bounded on the South by A LINE from the Bay of
 “ Chaleurs, *along the high lands* which divide the rivers
 “ that empty themselves into the River St. Lawrence from
 “ those which fall into the sea, to a point in forty-five
 “ degrees northern latitude, on the eastern bank of the
 “ River Connecticut, keeping the same latitude directly
 “ West, through the Lake Champlain, until, in the same
 “ latitude, it meets the River St. Lawrence; from thence
 “ *up the Eastern bank* of the said river to the Lake Ontario;
 “ thence through the Lake Ontario and the river commonly
 “ called Niagara; and thence *along by* the Eastern and
 “ South-Eastern bank of Lake Erie, *following the said bank*
 “ until the same shall be intersected by the northern
 “ boundary granted by the Charter of the Province of
 “ Pennsylvania, in case the same shall be so intersected;
 “ and from thence *along the said* northern and western
 “ boundaries of the said Province, until the said western
 “ boundaries strike the Ohio; but in case the said bank
 “ of the said lake shall not be found to be so intersected,
 “ then *following the said bank* until it shall arrive at that
 “ point of the said bank which shall be nearest to the
 “ north-western angle of the said Province of Penn-
 “ sylvania; and thence, by a right line, to the said north-
 “ western angle of the said Province; and thence *along*
 “ *the western boundary* of the said Province until it strike
 “ the River Ohio; and *along the bank of the said river,*
 “ *westward,* to the banks of the Mississippi, and NORTH-

“WARD to the Southern boundary of the territory granted
 “to the Merchants adventurers of England, trading to
 “Hudson’s Bay.”

This description your committee think is, at the least, a very full one, and any ambiguity in it does not at first glance appear. The boundary is stated to be a LINE. That excludes Mr. Mills’ notion of an undefined territory to the North without a Western boundary. It is, moreover, a line which follows in its whole length certain stated objects—rivers and mountains—until a certain point is reached; then it becomes a line Northwards, without qualification, until it reaches a certain boundary to the North.

Your committee would remark that the starting point of this line on the West is not disputed. The line Northwards is admitted to have its *terminus a quo* at the junction of the Ohio and Mississippi. The Statute lays down the *terminus ad quem*; to wit, the Southern boundary of the territory granted to the Hudson’s Bay Company. The line is a line Northwards—the arbitrators would draw a line North-westwards along the Mississippi, until they reach the head of that river, then they draw a line due North for eighty miles, and then a line Eastwards, along the Albany River to the shore of Hudson’s Bay. To your committee it is beyond doubt that such a boundary can only be a conventional one. The only North line in the award is the short one from the international boundary to the English River—the words, “along the banks of the Mississippi” are read into the Statute, and, finally, the shore of Hudson’s Bay is substituted for the Southern boundary of the territory granted to the Hudson’s Bay Company.

Your committee are of opinion that such startling modifications of an explicit boundary cannot be justified. A definite starting point is admitted by all upon the south—but the *terminus ad quem* on the North is not found at all, but it is assumed to be the Albany River, because “at one period the Hudson’s Bay Company considered “that as a satisfactory Southern boundary.” What

opinions the Hudson's Bay Company, from time to time, may have entertained upon the subject are not relevant to the question. The boundary is the Southern boundary of the *territory granted* to them and no other. Unless this be found the problem is insoluble. The arbitrators admit they do not find it, and this is fatal to their award.

In his argument (Ontario Boundary Documents, p. 360) Mr. McMahon stated before the arbitrators that "the Northern boundary is of no great consequence." Your committee do not concur in this view. They believe that the Northern boundary is the essential point in the controversy, for to it the North line starting from the junction of the two rivers must be drawn. They consequently first addressed themselves to the discussion of the northern boundary.

NORTHERN BOUNDARY.

The Statute of 1774 declares that the Northern boundary of Canada is the Southern boundary, *not* of Hudson's Bay, but "of the *territory granted* to the Merchants adventurers trading to Hudson's Bay." The grant referred to is the Charter of the Hudson's Bay Company granted in 1670. The words in the Charter are as follows:—

"All those seas, bays, rivers, lakes, creeks and sounds
"in whatsoever latitude they shall be, that lie within the
"entrance of the straits commonly called Hudson's Straits,
"together with all the lands and territories upon the countries,
"coasts and confines of the seas, bays, lakes, rivers, creeks
"and sounds aforesaid, that are not already possessed by the
"subjects of any other Christian prince or state."

The words here given must be read into the Statute, and they refer to a state of matters at and prior to the date given, viz., 1670. It is important to keep this always in view. It is because this has been lost sight of that the question has been overlaid by narratives of the deeds of Iberville and de Troyes and others in the succeeding wars;

interesting enough no doubt, but totally irrelevant. Unless the French had, prior to the English, *taken formal possession* of lands upon the waters flowing into Hudson's Bay, all those lands were included in the grant, and the Southern boundary would be the watershed of the St. Lawrence basin. The English at all times claimed the "height of land" as their boundary, and the French did not dispute it until the English settled on the Bay. Upon this point the Committee would invite the attention of your Honorable House to the evidence E appended to this Report. The formal possession of Canada taken by Jacques Cartier, succeeded by the settlement at Quebec of Champlain, gave France a title to the basin of the St. Lawrence, and, in like manner, the discovery by Hudson, and the formal possession taken in 1612, succeeded by the settlement in 1667, gave to England a title to the whole basin of Hudson's Bay. A question might have arisen if the French had settled on the head waters of the streams before the English had settled on the lower waters at their mouths; but such was not the case. The English were prior in discovery, prior in act of formal possession, and prior in actual settlement. Upon this point the very admirable report of Mr. Justice Ramsay, to be found in the Dominion Report is conclusive. He was almost alone in perceiving the importance of the Northern boundary. His report and evidence are free from irrelevant matter.

Your Committee do not think it necessary to recapitulate in their Report the details and proofs upon this head contained in the evidence marked E. The very important map placed before them by Mr. Cugnet convinced them that, in 1656, the French fully admitted the English claims to the water-shed as their boundary. The testimony of these early maps they consider to be unimpeachable and the fact they demonstrate is fatal to the French claims, for they demonstrate that, before Lake Superior was known beyond the Sault Ste-Marie, the English were the recognised proprietors of the country to the North *up to the water-shed.*

The English always claimed it, and under their claims the King granted the charter. It was argued that the King, at the conquest, succeeded to the rights and claims of the King of France; that no doubt is true; but it does not follow that the claims of the King of France were just, or that the King of England, in his character of successor to the King of France, could invalidate the charter he granted as King of England.

It is worthy of remark that the charter of the Hudson's Bay Company and the extent of the grant made have often been challenged, but never with any prospect of success. The Dominion Report contains many favourable opinions of eminent counsel, and indeed there is very little difference of opinion among the lawyers. Mr. Holroyd in 1812, Mr. Cruise in 1812, Mr. Scarlett in 1813, Sir Samuel Romilly in 1814, Dr. Stoddart in 1819, Chief Justice Sewell in the *De Reinhart* case, Mr. Justice Armour in his evidence, Mr. Justice Ramsay in his evidence, Mr. Justice Johnson in his evidence, all declared that the extent of the grant was up to the watershed, and covered all the lands watered by the rivers which flow into Hudson's Bay. The Dominion Government was wiser than to bring the question before the Courts, and, by purchasing the rights of the Company, virtually recognised them. Whatever difference existed among the surveyors and geographers as to the Western limit, all concur in portraying the height of land as the Northern limit of Canada, and it is utterly impossible that a mere verbal slip in a purely administrative document could affect a matter of so great magnitude. In view of these considerations, your Committee feel surprised that the phrase "boundary of Hudson's Bay" in the commission of 1791 should be interpreted other than as "the boundary of the territory granted" to the Hudson's Bay Company of the Statute of 1774 and of the Charter of 1670; and their surprise is heightened into wonder when these phrases are taken by the arbitrators to mean *shore* of Hudson's Bay. Nothing but the

enormous mass of irrelevant and gossiping history and biography, and the confusing multitude of administrative documents, having no legislative value, which were heaped upon this case, could ever in the opinion of your Committee have obscured so plain an issue.

WESTERN BOUNDARY.

The Northern boundary being, in the opinion of your Committee, the height of land which separates the water flowing into Hudson's Bay from the water flowing into the St. Lawrence, they have very little difficulty with the Western limit. It is stated by the Statute to be a line drawn Northwards from the junction of the Ohio with the Mississippi to the Northern boundary.

The words of the Statute are plain enough, but several theories of interpretation are propounded. Some persons, as Mr. Mills, would like to *omit* the word *line* from the Statute, and open up the boundary to the Pacific; others do not propose to omit anything but wish to *add* to the Statute the provision, that the line should be drawn along the Mississippi; and others read the Statute without gloss or omission and take *northwards* to mean *north*, and *line* to mean *line*. Among the last are found the large majority of professional men—lawyers, and surveyors. As to the first, it was advocated by Mr. Mills, and at one period by Mr. Dawson, but your Committee think that the word *line* cannot be left out of the Statute; and they believe that it is less probable that all the officials and professional men and the people of Canada and England generally, should for one hundred years have been labouring under a delusion than that Mr. Mills is so afflicted. That the arbitrators got astray into Hudson's Bay is due to the admitted fact that they could find no Northern boundary, and thought themselves obliged to construct one; but, the Northern boundary once found, the difference between the Dominion and Ontario is a very small one.

In considering this question, it must be remembered

always that, at the period (1774) of the Statute, the whole country belonged to Great Britain. The height of land on the North, and the Ohio on the South, enclosed a vast solid area of territory compared with which the sinuosities of the Northern boundary were trifling. Now that the larger portion of this territory, belongs to the United States, the Southward curve of the water-shed assumes importance; for it crosses the International Boundary a little West of Lake Superior, and shuts in Canada on the West. If then the second theory be taken, and the Northward line be held to run along the Mississippi, it will reach Itasca Lake, the source of the River. Thence it must strike due North until the height of land is reached which there is in United States territory, then the line must follow the height of land and enter Canada at Gunflint Lake. Your Committee think that there is much to be said for this view. If the Northern boundary be (as they believe it is) the height of land, this boundary is the very utmost that can be ascribed to Ontario, and which indeed, although shutting out the Western provinces from the Lake, yet adds to Ontario very little territory.

Your Committee, however, are of opinion that in the words of the Statute alone, the true boundary is to be found. They doubt the propriety of putting into the Statute a clause which was not enacted. They do not find the language in the least ambiguous. It affords a perfectly intelligible meaning without any gloss whatever, and ought to be taken to have the meaning which lies upon the surface. From Mr. Mill's interesting narrative it is evident that the description of the boundary was much debated in the House, and the words were carefully chosen by men who knew the value of words in so important a matter, probably as well as any men now living. They must be supposed to have been competent to express their intentions. It is unsafe to suppose that a Parliament containing men like Burke, Barré and Pownall, has required the assistance of such a mass of

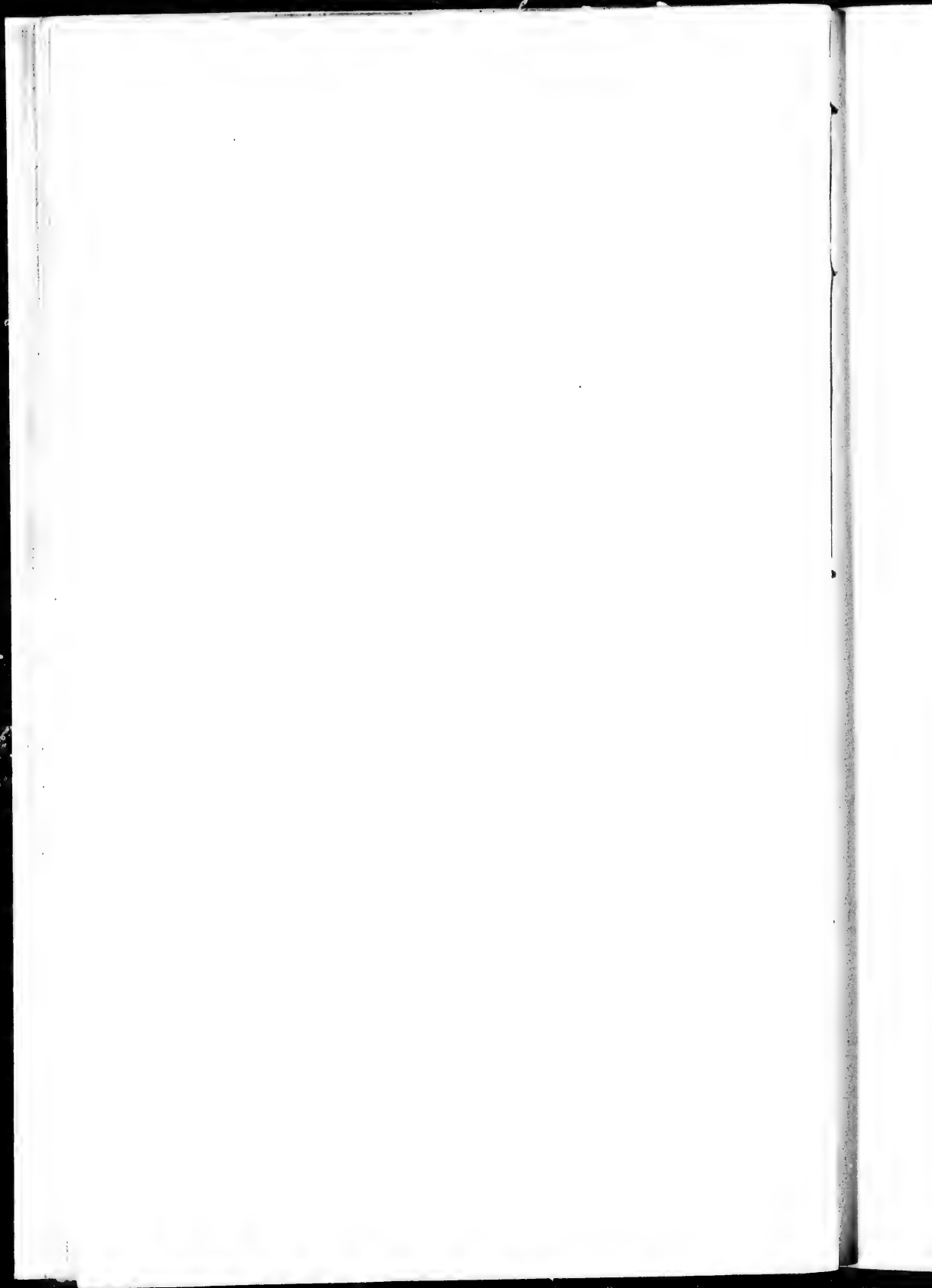
illustrative documents to eke out the meaning of its enactments.

It is with very great reluctance that your Committee venture to leave the firm ground of the Statute, and embark, for a moment, upon the sea of conjecture. If, however, a line Northwards may be a North-West line, it may be a North-East line. It is, moreover, irrational to invoke a Governor's Commission as valid to extend a boundary, and to refuse to admit that a later Commission may contract it. Thus Sir Guy Carleton's Commission goes to the Mississippi and is valid, but Lord Elgin's (the latest with boundary descriptions) goes only to the entrance of Lake Superior and is invalid. It is not reasonable to vary the extent of the Royal Prerogative according to the shifting exigencies of argument, and Mr. Dawson in his evidence before the Dominion Committee is, in that respect, strictly logical. Sir Guy Carleton's Commission went to the extreme limit of the British possessions in America on the West because he was the representative of the King, and a Military Governor commanding in troublous times, but it does not follow, therefore, that Parliament intended to extend the civil government up to the same extreme limits. Beyond the limits laid down by Parliament, the King's prerogative is supreme; within these limits the King is the chief executive power, the first magistrate for enforcing the enactments of the supreme legislature. It is much more probable, if a line "*Northwards*" is to be construed by the circumstances of the time, that it meant a line North-Eastwards along the Mississippi and the Illinois Rivers coming out on Lake Michigan at the present Chicago, and reaching the height of land at the entrance of Lake Superior. Such a line is seen on all the maps of the time. It includes the French settlements on the Illinois, and excludes the territories of the independent Indian tribes. Concerning this line much might be said, and one of the witnesses examined (App. H.) argued with great plausibility for it, but your

Committee think that although the latest Royal Commission supports such a line, it is extremely unsafe to wander from the plain words of the controlling Statute.

Reverting to the description in the Statute, it is evident that the boundary of the Province marked out is stated to be a *line*. It is important to observe this, because Mr. Mills eliminates the line on the West and thus gets out to the Rocky Mountains. But if the Northern boundary be the height of land as found by your Committee, this height of land crosses the United States territory at Gunflint Lake, near Lake Superior, bars Mr. Mills' escape to the West, and confirms Mr. Justice Armour's view that, owing to the changes caused by the revolt of the colonies to the South, the Northern boundary came also to be the Western one. Chief Justice Sewell was very clear upon the fact of the boundary being a *line* and the Arbitrators have taken the same view. On reference to the Statute, it will be seen that the *line* commences at Bay Chaleur—that it follows along certain high lands,—along a parallel of latitude—along the St. Lawrence—along Lake Erie—along the boundaries of Pennsylvania—along the Ohio to the banks of the Mississippi—specifically qualified by all these stated objects ; but when it reaches the Mississippi the line is stated absolutely to proceed Northwards, without qualification expressed, to the territory granted to the Hudson's Bay Company. The word *line* is the subject of the whole sentence. It is a line upon the South running Westwards, but westwards qualified by the words "along the Ohio." When it reaches the Mississippi it becomes a line *Northwards*, without any qualification, to a named object. Parliament might easily have added, along the Mississippi, but it did not. Your Committee are averse to speculate upon the cause of this marked omission. It might well be that those members who struggled so earnestly against the extension of the French laws and Roman Catholic religion, were determined not to extend them into unknown

regions in the West, for there was then much doubt as to the true course of the Mississippi. At the confluence of the two rivers is a point westward of which it was not the will of the supreme legislature to extend those laws, and therefore the line Northwards was left without qualification in a manner so marked that it could not have been by inadvertence. The military Government extended along the extreme Western frontier—the Mississippi River—where posts might exist and garrisons be kept; and General Carleton's commission was therefore not drawn in the terms of the Statute. Such may, or may not, have been the reasons for the variation. Your Committee are not instructed to inquire into what the Parliament of 1774 ought to have done, or to penetrate into the motives which guided them; they are simply to inquire and report upon what Parliament did do; and they beg to report that Parliament fixed the Western boundary of the ancient Province of Quebec by a line Northwards without qualification and absolute, and therefore North, and North only; and that nothing has occurred since to change the boundary then enacted.



EVIDENCE

TAKEN before the Select Committee of the Legislative Assembly of Kewaydin—April 25th, 1883.

A

The Committee met—Mr. Cosmas occupied the chair.

THE CHIEF JUSTICE OF KEWAYDIN examined.

By MR. MILTON.

Q.—Can a Commission issued by the Crown in any way add to, or derogate from, an Act of Parliament?

A.—The King is part of the Parliament. In conjunction with the two Houses, he exercises supreme legislative power. He cannot, in exercising his prerogative powers, modify a Statute. As the Executive power of the State he can only carry out the Statutes which he has assisted to make.

Q.—But as interpreting a Statute might not Royal Commissions, Instructions, Orders in Council or Proclamations have weight?

A.—The proper interpreter of Statutes is the King in his judicial capacity in his Courts. There is no other. Documents issued by the King in his executive capacity are efficacious only in carrying out a Statute. If they add to, or take from, the Statute they are *pro tanto* void. Where the supreme Parliament has legislated, the supreme Parliament alone can alter.

Q.—But in the case of a country acquired by conquest or cession, has not the King power to make laws by virtue of his prerogative?

A.—Yes. Until a legislature is granted, or until Parliament intervenes. All conquests are the King's, by right of his Crown; and all conquests and colonies are subject to the authority of Parliament. There cannot exist any power in the King beyond the reach of Parliament.

Q.—Have you read the Reports upon the Boundaries of Ontario published by the Dominion and Ontario Governments? and have

you not observed the weight attached to Royal Commissions, Instructions, and Proclamations?

A.—I have read them all. As bearing upon the question of boundaries fixed by Statute they are of no value.

By Mr. BACON.

Q.—You said just now that in a conquered country the King had legislative powers; Was not Canada such a country?

A.—No doubt it was. Up to the date of 1774, when Parliament intervened, the King's Commissions, Instructions and Proclamations were valid to their full extent. After that date they were limited in their effect by the legislative authority of Parliament. Before that date the King fixed by Proclamation the boundaries of the Province of Quebec; the Statute 14 Geo. III. extended these boundaries and fixed them beyond the power of the King to enlarge.

Q.—But beyond these statutory boundaries would not the prerogative authority of the King remain intact?

A.—Yes—so long as Parliament did not legislate.

Q.—Previous to the year 1774 did Parliament usually intervene in the matter of boundaries?

A.—That is not a question of law, but of fact. Mr. Mills in his evidence (Dominion Report, p. 32) says that Parliament commenced such legislation in 1774. It is sufficient for the present purpose that Parliament did legislate in that year. What the King did previous to that date is matter of historical interest, but irrelevant to the legal point now in debate.

Q.—But in this very Statute of 1774 it is stated that such boundaries shall exist during the King's pleasure?

A.—I observe that Mr. Mills so states it, but he has not precisely stated the point. The Statute enacts precisely that certain territories described, on the North and West, and also that certain territories on the East, shall, during the King's pleasure, be part of the Province of Quebec. It is Parliament, therefore, which has added to the Province certain specified territory during the King's pleasure. In so doing the Parliament declared the limits of the Province for which it provided a government and a body of law. It is quite open to argument that, if the King had so desired, he might have under that clause again restricted the Province of Quebec to its previous bounds. He could not add

other territory beyond the specified limits, and place it under the peculiar conditions imposed by Parliament upon the Province of Quebec. He could not thus extend the French laws, and establish certain specified religious institutions beyond the line laid down by the Statute.

Q.—Did not the Statute of 1791 enable the King to extend the limits of the Province of Quebec?

A.—The Statute of 1791 in no way affected the question. As clearly laid down by Chief Justice Sewell it stated that the King had announced his intention to divide the Province of Quebec, and then proceeded to make laws for each segment. The Order in Council of Aug. 24, 1791, repeats that the object of the King is to divide the Province of Quebec.

By the CHAIRMAN.

Q.—How was the Province of Quebec then divided?

A.—It was divided by the Order in Council of Aug., 1791, as recited in the Commission, of September 12th, 1791, to Lord Dorchester.

Q.—Were not the boundaries then altered?

A.—The dividing line between Upper and Lower Canada was laid down. No other boundary was mentioned in any of the documents of 1791. There is an implied reference throughout them all to the boundaries fixed in 1774. The Act of 1774 is mentioned in the Commission, and the Act of 1791 is also mentioned, as repealing certain portions of the Act of 1774, which portions do not relate to the limits of the Province of Quebec.

Q.—But the Northern limit of the Province of Quebec in the Statute of 1774 is the Southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, whereas the dividing line between the two new Provinces is said to run to the boundary line of Hudson's Bay?

A.—The two expressions are identical in meaning. The verbal difference is very slight. The whole purview of all the documents regards a definitely bounded tract of territory which is being divided into two parts. Territories and Statutes are not dealt with by slight verbal changes, but by distinct, definite, and specific enactments. Besides, as I said before, if the King had intended to extend the Province of Quebec past the lines laid down by the Statute of 1774 it was not in his power. But the

King did not so intend. He says so, and, as a matter of fact, the new Provinces did not so understand it.

Q.—There are, however, subsequent Commissions which contain the words shore of Hudson's Bay as equivalent to boundary of Hudson's Bay?

A.—After a Constitution had been granted to the Provinces of Quebec and Ontario they became self-governing. It was not then in the power of the Crown either to add to or take from the boundaries then existing, without the consent of the Legislatures of the Provinces affected. Whether the supreme Parliament could do so is another question. As a matter of fact, it did not.

Q.—Then the only boundaries of Ontario and Quebec are those of the Act of 1774?

A.—Beyond doubt.

By MR. FRANKLIN.

Q.—If that point is so clear, how do you account for the opinions of the lawyers being so conflicting?

A.—The opinions of the advocates conflict, because each is bound to argue to the extreme edge of his brief; but the opinions of the lawyers in the evidence are singularly concurrent.

Q.—But there were great differences of opinion as to the powers of the Crown?

A.—Yes; the laymen were all high prerogative lawyers; the professional men were not. Of course the arguments of opposing counsel must not be considered as involving their private legal opinions on either side.

Q.—But Mr. Hodgins in his evidence took the same high prerogative ground as Mr. Mills. (Dom. Rep. 119)

A.—Mr. Hodgins evaded the question (No. 438) which was asked him. He was asked, in effect, whether the King alone could extend or diminish the boundaries of Provinces. He replied that the King could do so in the case of Crown Governments. Nobody asked him whether Canada was such a Crown Government as he described. Again, [in No. 382] he limits the prerogative of the Crown to the interpretation of indefinite boundaries, and begs the question by asserting that the Western boundary of Canada was such an indefinite boundary. Then [at No. 388] he says that even indefinite territories could not have been defined by Royal instructions, there must be a proclamation;

and then [at No. 391] he says, in effect, that the proclamation issued by the deputy governor, Sir Alured Clarke, in the absence of the Governor-General, could modify the Royal Commission, vary from the Royal instructions and interpret the indefinite Act of Parliament. Mr. Hodgins was the advocate of Ontario before the Arbitrators. It was not becoming to endeavour to make him contradict his own pleading. His own opinions appear under the surface in spite of his efforts—thus [at No. 404], he draws a perfectly sound distinction between the limits of a Province and the limits of a commissioned officer's jurisdiction, from the consequences of which he shrinks when pressed.

Q.—Was not the evidence of the other lawyers discordant?

A.—No. Mr. Justice Armour said (No. 574): "I do not think that any lawyer will be found who will affirm that any Proclamation for the purpose of dividing the Province, or any Commission issued to a Governor of a Province, can have any effect whatever on the territorial rights of the proprietors of the country dealt with"; and again (p. 130), "these commissions, being mere instructions to the Governors, could have no effect whatever in altering territorial boundaries. The Commission of Governor Andros of Connecticut, gave him authority to the South Sea. It is only necessary to state this to show the absurdity of any territorial rights being acquired by any such means."

Then Mr. Justice Ramsay in his answer (No. 630) expressed the opinion which Mr. Hodgins evidently held but would not develop—"The Government of the Dominion of Canada at the present day could, doubtless, authorize the Governor of Manitoba to govern the territories beyond that Province; but the Government could not extend the Province; that can only be done by an Act of Parliament."

Mr. Justice Johnson also in his answer (No. 349) says: "of course any Statute may have been interpreted rightly or wrongly by the Executive, but the interpretation could not alter the Statute"; and [in No. 351] he adds that Royal Instructions could not in any way diminish or extend the Province of Quebec. Again, in the de Reinhart case the unanimous decision of the Court was against the interpretation of the Act by the Proclamation, and in favour of interpreting the Proclamation by the Act. These opinions are all in accord.

Q.—But did not Mr. McDougall's evidence favour the high prerogative view?

A.—Yes. In his opinion it was the prerogative of the Crown to fix boundaries to Provinces. The Act of 1774 he thinks was subject in this respect to the action of the prerogative, because it is stated in the Act that the boundaries mentioned were to exist during His Majesty's pleasure. Therefore, he concludes, inasmuch as the Act fixed the boundaries, and inasmuch as the Act permitted the King to revert to the old boundaries, the King had the prerogative of fixing them and the prerogative power of enlarging them. (No. 692.)

Mr. McDougall's opinion is vehemently advocated by the laymen. Mr. Mills is especially clear. He says the Crown could (No. 58) fix the boundaries where it pleased. It could alter or amend them (No. 47). There is no shadow of doubt in his mind as to the absolute power of the King in the matter of boundaries. Then also, Mr. Dawson (p. 174) is an advocate for the Royal Prerogative, for he takes the latest Royal Commission and argues that it extended the boundaries of Ontario to Hudson's Bay on the North, and curtailed them to Sault St. Marie on the West. Mr. Dawson's position is a logical one, and is a *reductio ad absurdum* of the false principles with which the high prerogative lawyers start. The latest manifestation of the Royal will must prevail, if they are strictly logical.

Q.—But if the Statute is so clear how could such discordant interpretations exist?

A.—In consequence of people reading into the Statute their own preconceived notions of what it ought to enact. When they feel sure that they have divined from letters and newspapers the secret wishes and intentions of the Legislators of 1774, they have no hesitation in cking out the defective legislation of that period by supplementary legislation of their own, to which they are pleased to attribute the name of interpretation.

By MR. FRANKLIN.

Q.—Were there not discordant opinions among the lawyers concerning the validity of the Hudson's Bay Company's territorial rights?

A.—No. The opinions cited as adverse (pp. 400 and 403 Mr. Mills' Report) refer only to the exclusive right to trade

which they think the King could not grant.—The opinion on p. 404 was clear against the exclusive right of trade, but uncertain as to the extent of territorial right. All other opinions were throughout in favour of the Company.

B.

MR. CAVENDISH examined.

By the CHAIRMAN.

Q.—I believe you have given much attention to the Boundary Question?

A.—Yes. Before my removal to this Province I followed it very closely, both from duty, as a member of the Dominion House of Commons, and from inclination.

Q.—Did you take any interest in the proceedings before the Arbitrators?

A.—Yes, a great deal.

Q.—When were the Arbitrators appointed?

A.—Those originally appointed did not act. Chief Justice Richards was first named for Ontario on Nov. 10, 1874; the Hon. L. A. Wilmot was nominated for the Dominion on Nov. 12, 1874. The first became Chief Justice of the Supreme Court, and the second died. The Dominion Government then nominated Sir Francis Hincks. I do not know the precise date. The Province of Ontario nominated Chief Justice Harrison on July 31, and Sir Edward Thornton was appointed as the third member on the same day.

Q.—When did the Arbitrators meet?

A.—Two of them met on the following day, August 1st, 1878, but Sir Francis Hincks being absent, nothing was done. The proceedings commenced on August 2nd.

Q.—How long did the Arbitrators sit?

A.—Upon August 2nd, both the counsel for Ontario were heard at full length, and one of the counsel for the Dominion commenced his statement. On the following morning before he resumed Chief Justice Harrison announced that if the argument could be got through by one o'clock there was a prospect of the Arbitrators being able to agree.

By Mr. BACON.

Q.—Had not the Dominion case been stated when this announcement was made?

A.—No. Mr. McMahon was not half through, and Mr. Monk had not spoken. Mr. McMahon said he would shorten his argument very much.

Q.—Is it customary at Ottawa to curtail the statement of an important case to suit the convenience of a Court?

A.—I do not know. There was something wrong with the Dominion case. In the Report published (Ontario Boundary Documents) that clearly comes out. The argument for Ontario takes up 36 pages, and counsel were interrupted 17 times. The argument for the Dominion takes up only 30 pages and counsel were interrupted 60 times. During the statement for the Dominion, it was like a dispute between judges and counsel. It must have been discouraging to argue an intricate case before impatient judges, one of whom announced that, practically, the arbitrators had made up their minds on hearing one side only.

Q.—Was the award then made the same day?

A.—Yes. After the counsel for the Dominion were heard, the counsel for Ontario replied and the award was signed and dated August 3rd.

By Mr. THIERS.

Q.—What was the question submitted to arbitration?

A.—To decide the true western and northern boundaries of Ontario.

Q.—Was it not to find a conventional boundary, if the legal boundary could not be found?

A.—No. Ontario wished for a conventional boundary, but the Dominion steadily refused to make any such reference.

Q.—Is that any where on record?

A.—Yes. On page 233 Ontario Boundary Papers; Order in Council May 31st 1872. And Report of Dominion Privy Council Nov. 12 1874 (p. 247) recommending arbitration to determine the northern and western boundaries of Ontario.

By Mr. FRANKLIN.

Q.—Was the award received with approval?

A.—It was received with surprise. The boundaries awarded

corresponded to no map, commission, statute, or document of any kind. The fact was, the arbitrators could not find the northern boundary at all. Chief Justice Harrison seemed to have concluded on general principles that the French visited Hudson's Bay before the English settled there. In one of his interruptions he stated categorically that "before these periods there can be no doubt that *some Frenchmen* had penetrated to Hudson's Bay." (p. 340 Ont. Bound. Doc.)

By Mr. BACON.

Q.—But that was the very point disputed.

A.—Yes, but it was a difficult assertion to rebut, and Mr. McMahon found it hard to disprove what "*some Frenchmen*" might have done. He accounted for all specified Frenchmen, but the hypothetical feats of some unspecified Frenchmen seemed to puzzle him.

By Mr. SHERIDAN.

Q.—Can you imagine what Chief Justice Harrison was referring to? He must have seen somewhere in the papers a statement which suggested the idea to his mind that "*some Frenchmen*" had visited Hudson's Bay prior to the date named.

A.—I think it was this passage in Hon. Mr. Cauchon's paper at p. 356 of Hon. Mr. Mills' Report. "However strong the "probabilities, therefore, of the *Coueurs du Bois* having been "in communication with the great Northern Bay before the "visit of Hudson in 1610, or of Button in 1612, it is not "necessary to base any argument thereon." The credit of this paper is claimed by Mr. Dawson in his evidence (p. 165 Dominion Report). To speak of *Coueurs du Bois* at the time of the founding of Quebec is a stretch of imagination scarcely warranted even by the controversial nature of that document. The sixteen sailors left at Tadoussac by Pontgravé in 1600 nearly all perished during the winter by famine or disease. What transpired during these trading voyages is on record in the works of Champlain and Lescarbot.

Q.—Then you think that these were mythical Frenchmen?

A.—Yes. Frenchmen of the brain, suggested by the exigencies

of the case against the Hudson's Bay Company. The other nameless Frenchmen who followed immediately after Jean Bourdon (p. 361) may be referred to the same category.

C.

THE SURVEYOR-GENERAL OF KEWASDIN examined.

By THE CHAIRMAN.

Q.—You are, of course, familiar with the maps and documents bearing upon the question of the boundaries of this Province on the East and South?

A.—It is my duty to keep informed of such matters. Of late years the question has become much encumbered with irrelevant matter, and my task is not an easy one.

Q.—Do you think then the question is complicated?

A.—On the contrary, I think it a very simple one; but ever since the struggle with the Hudson's Bay Company the minds of many people have remained unsettled; and extravagant claims, made for the purpose of cheapening a purchase, have been taken as serious. Enormous masses of literary matter have been thrown into ponderous volumes until the real issues have been hidden.

Q.—Did not the professional surveyors share in the general confusion?

A.—No. The opinions of the surveyors were generally in accord. It was the amateurs and literary men who mixed up matters. Then it got to be a matter of practical politics and stump oratory; like the Maine boundary question was in the United States.

Q.—How can you say that the surveyors were in accord in the face of the evidence at Ottawa?

A.—It is just that evidence which led to my assertion. The amateurs can find no northern boundary; the surveyors have no difficulty, they have been drawing it on their maps for a hundred years. The surveyors examined were unanimous in drawing a due north line to meet the watershed of Hudson's Bay. The amateurs wandered—some to the shore of Hudson's Bay, some to Lake of the Woods, some to the Rocky Mountains, and some to

the Pacific Ocean. One would be led to suppose that there had never been any maps, never any statutes, never any legal decisions, never any Hudson's Bay Company and never any Province of Assiniboia. Nothing seemed to hold them.

By MR. THIERRY.

Q.—What were these concurrent testimonies of professional men to which you refer?

A.—Surveyor-General Russell's (p. 11 Dom. Rep.), Mr. Murdoch's (p. 144), and Col. Dennis' (p. 1); these were the only professional men examined and they were all of opinion that the line of the statute of 1774 was a due North line, and that the boundary on the North was the watershed of Hudson's Bay.

Q.—But Mr. Sax was of opinion in 1818 that the western boundary followed the River Mississippi?

A.—Yes; Mr. Sax thought that a North line meant a line along the river until its source was reached, and then a due North line to Hudson's Bay. The award does not follow Mr. Sax's line, nor, in fact, any line laid down ever before.

By MR. FRANKLIN.

Q.—Are there not certain fundamental principles observed by surveyors in laying out lands where no accurate maps exist?

A.—Yes; they are nowhere better stated than by the Hon. Edward Livingston, Secretary of State for the United States. He said: "Boundaries of tracts and countries, where the region through which the line is to pass is unexplored, are frequently designated by natural objects, the precise situation of which is not known, but which are supposed to be in the direction of a particular point of the compass. Where the natural object is found in the designated direction no question can arise. When its course will not touch the natural boundary the rule universally adopted is not to consider the boundary as one impossible to be traced, but to preserve the natural boundary and to reach it by the nearest direct course. Thus, if after more accurate surveys shall have been made it should be found that the north course from the head of the St. Croix should not reach the highlands which answer the description of those designated in the treaty of 1783; then a direct line from the head of the St. Croix, whatever may be the direction, to such highlands ought to be

adopted." President Jackson laid down the same principle and states that he is advised that it is a rule in practical surveying, which prevailed before the revolution and was then obligatory.

Q.—What use would this principle have in this instance?

A.—This—that if the north line of the statute be made to swerve to the West, following the course of the Mississippi, to suit the claims of Ontario, that when such a North west line reaches the source of the river the object specified must be reached by the most direct route. Now in this instance that object is the height of land separating the Hudson's Bay basin from the St. Lawrence basin. This is reached in the territory of the United States a few miles north of Lake Itasca, and the boundary line would cross the border at Gunflint Lake, following the height of land.

Q.—Do you advocate that boundary?

A.—No; the North line of the statute from the junction of the Ohio, strikes the northern boundary in the manner laid down by the evidence of the surveyors. I merely give it to show the inconsistency of those who would follow the Mississippi in all its windings with a nominal north line, and then strike through to Hudson's Bay, leaving the object sought in their rear.

Q.—What line did the arbitrators follow for the Northern boundary?

A.—They did not follow any. They found no northern boundary. They made a conventional boundary.

Q.—On what authority do you say this?

A.—On the authority of the following sentence in Sir Francis Hincks lecture at page 420 of the Ontario Boundary Papers "the sole ground for the charge that they (the arbitrators) adopted a conventional or convenient boundary is that the line connecting the North Eastern and South Western boundaries was adopted for the sake of convenience" and Sir Francis has said in his writings "no tribunal could find a legal boundary for Ontario on the north," and again in his lecture "it seemed to the arbitrators that a natural boundary following the course of the Albany river left to the representatives of the Hudson's Bay Company quite as much territory as they could justly claim." And again the arbitrators "were strongly urged by Col. Dennis, one of the permanent staff of the Department of the Interior, after their decision as to the south westerly and north easterly boundaries became known, to connect the two

"points by a natural boundary and being aware of the fact that the Albany river had been formerly suggested by the Hudson's Bay Company as a satisfactory southern boundary, they adopted it." For these reasons, I say that the whole Northern Boundary of Ontario as awarded is a conventional, convenient or forced boundary not answering to any map, document, record or statute.

By Mr. THIERS.

Q.—Do you know of a similar instance of an arbitrator being unable to find a boundary.

A.—Yes. In 1831, in the case of the Maine territory, when the arbitrator, the King of the Netherlands, was unable to find a boundary which was a legal one, he did not make an award, but suggested a conventional one. When the arbitrators, concluded that Ontario had no boundary on the north they should have done likewise.

By Mr. MILTON.

Q.—Was the question of boundaries submitted to arbitration by authority of Parliament?

A.—No, the Lieut.-Governor's despatch of Feb. 18, 1882, states that "It is not pretended that the arbitrators received any instructions beyond the Orders in Council."

Q.—Then you think that as they could not find the northern boundary laid down by the Statute they proceeded to lay down a conventional one.

A.—Yes.

Q.—You referred to the claims of the Ontario advocates as ignoring certain Statutes. What Statutes do you mean?

A.—I was then thinking of the Statutes for the regulation of the Indian Territories, and the decisions of the Courts under them. Under these claims there could be no Indian Territories for they are all Ontario. I was thinking also of the colony of Assiniboia with its Governor, judicature, and British troops, recognised, though not erected, by the Imperial Government and in direct communication with it.

By Mr. BERGHAUS.

Q.—How do you account for the arbitrators arriving at conclusions so opposed to all former views?

A.—Very easily. It was all done in a jump. They started at James' Bay where they had no occasion to be at all. They assumed there was no northern boundary of the Province of Quebec. From James' Bay they drew their line up the Albany River and down the English river. The whole theatre of their labours is in the Hudson's Bay basin and to the north of the northern boundary, consequently they never could find it. The boundary they were looking for was to the south of them all the while. They never worked in Canada at all.

Q.—How did they get to James' Bay in the first instance?

A.—Because they worked in the reverse direction of the natural order of things. The north line of the statute commences from a known geographical point upon the south. The arbitrators confess that they can find no true northern boundary, and yet they commence in the north. They argue from an initial uncertainty and they had to begin somewhere. If they had followed the method of the controlling statute, let them draw their north line where they would it would have cut the watershed somewhere.

Q.—But the junction of the Ohio and Mississippi is now in the United States?

A.—That is immaterial. Geography does not change with politics. The directions of the statute are geographical directions.

Q.—You have not fully answered my question. There must have been some mention of James Bay in some document?

A.—I think the reason they went to James' Bay is that they took the words of the proclamation of Sir Alured Clarke, "the boundary line of Hudson's Bay," to mean the shore of Hudson's Bay, whereas the statute of 1774, which is the foundation upon which the whole structure rests says: "territory granted to the Hudson's Bay Company." Therefore, because they worked in a reverse order, and modified a statute by a subsequent proclamation they arrived at an erroneous conclusion.

Q.—If *boundary* of Hudson's Bay Territory is equivalent to *shore* of Hudson's Bay, what territory did King Charles grant to the Hudson's Bay Company?

A.—None whatever, except perhaps the islands in it—and the statute of 1774 is in error—and the whole of the pretensions of England in the treaties with France and the United States regarding boundaries have been based on misrepresentation. The water

of the Bay is, of course, bounded by its shores all round ; but King Charles did not make a charter to grant the water to the Company. The charter speaks of lakes, rivers, and territories in whatever latitude they lie, and the statute refers to the charter which therefore forms part of it so far as the reference goes.

D

THE ATTORNEY GENERAL examined.

By Mr. BACON.

Q.—Have you examined the award of the arbitrators in the Ontario Boundary Question, and can you inform us upon what it is based ?

A.—Yes. It is based upon a Proclamation of General Clarke who was administrator of the government in the absence of Lord Dorchester. This Proclamation is said to be based on the Royal Commission and Instructions to Lord Dorchester, which are said to rest upon an Order in Council, which is said to be based on the Statute of 1791. This Proclamation is supposed to have extended the boundaries of the Province of Quebec to Hudson's Bay and to Lake of the Woods.

Q.—Did the Proclamation correspond to the Boundaries laid down in the Commission ?

A.—No.

Q.—Did it correspond with the Instructions ?

A.—No, the Instructions referred to the Commission for a statement of boundaries.

Q.—Did the Proclamation correspond with the Order in Council ?

A.—No. This divides the Province, but gives no Boundary.

Q.—Did the Proclamation correspond with the Statute of 1791 ?

A.—No, it had no relation whatever to the Statute in the matter of boundaries, the Statute did not mention boundaries.

By Mr. THIERRY.

Q.—Please go over the chain of events relating to the Proclamation,

A.—1st. There was a certain territory known as the Province of Quebec. Parliament in 1774 fixed its exterior boundaries and established its laws.

2nd. The King announced his intention to divide this territory into two Provinces, and asked the concurrence of Parliament to make a constitution for each segment.

3rd. The Parliament receive signification of the division, and grant a constitution by the Statute of 1791 to each portion of the specified territory; to wit the former Province of Quebec.

4th. On Aug. 24, 1791, an Order in Council was issued to divide the Province of Quebec according to a dividing line ferred to, but unspecified.

5th. A Royal Commission was issued to Lord Dorchester on Sept. 12, 1791, reciting the division of the Province and stating that all that part of the former Province of Quebec, west of a specified interior line, was to be called the Province of Upper Canada.

6th. On the 16th of Sept., Royal Instructions were issued to Lord Dorchester, stating that the boundaries of the two provinces were to be as particularly expressed in the Commission.

7th. Lord Dorchester left for England and Sir Alured Clarke, general commanding, became administrator.

8th. On the 18th of Nov., General Clarke issued a proclamation stating that the Province of Quebec had been "*divided*," and describing the dividing line, referring to the Order in Council as authority.

Q.—How could all this series of documents be held to extend the Province of Quebec? The intention was to divide.

A.—In the Proclamation, the words deviated from the Commission by substituting in place of the words "*all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec*" the words "*all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.*"

By Mr. BACON.

Q.—Is it upon this only that the arbitrators proceeded?

A.—This is the kernel of the matter. All the Commissions and Instructions given in the Blue books have reference to this

clerical error in the Proclamation as they are supposed to throw light upon it. They do not throw light upon it. If Sir Alured Clarke intended to extend the limits of the Province, the King, his master, did not so intend. It was a simple clerical error, for no servant of the King would wittingly exceed his commission. As a matter of law, the King had no power by his prerogative to extend, but he did not intend to do it; and it was not done.

By the CHAIRMAN.

Q.—What then are the limits of the Province of Ontario?

A.—Those fixed by Parliament in 1774, the events of 1791 did not change them. Ontario is the western segment of the old Province of Quebec.

By MR. MILTON:

Q. You say that the Province of Quebec was divided by the Order in Council. Are you not aware that it was stated before the Dominion Committee that it was the Proclamation which divided the province?

A. Yes. Mr. Mills states that the division was made by the Proclamation, (p. 35, Dom. Rep.) Mr. Hodgins seems to be of the same opinion; although he is not so clear about it. King George the Third's opinion was different.

Q. Where do you find that given?

A. In his Commission to Lord Dorchester, Sept. 12, 1791, he says: "and whereas *we have thought fit*, by an Order made in our Privy Council, on the 19th day of August, 1791, to divide our said Province of Quebec, &c., &c."; then follow the boundaries. The King's own words answer all the special pleading regarding the Proclamation in Mr. Hodgins' and Mr. Mills' evidence. The language of the Order in Council is the language of enactment usual in such documents, and the Proclamation announces the fact to the inhabitants of Canada.

Q. It seems difficult to imagine anything clearer than that statement; but many of the witnesses seemed to dwell on the potency of Proclamations.

A. Those who were arguing from Ontario did so because their case rested like an inverted pyramid on a verbal slip in a proclamation. Lord Chief Justice Cockburn, quoting from Lord

Coke, in his charge (*R. vs. Eyre.*), states that it is settled law, "whenever a proclamation purports to be made in the exercise of legislative power, the proclamation is of no effect; for the Crown has no legislative power, except such as it exercises in common with the other two branches of the legislature."

Q. Still there was no dividing line specified in the Order in Council?

A. The Order in Council recites, that, previous to the passing of the Act of 1791, the King had sent down to Parliament a paper describing the proposed line of division, and that a copy of this paper was included in the order of reference, and, therefore, then before the Council. The Royal Commission to Lord Dorchester refers to the Order in Council, and states what that dividing line was. Consequently the dividing line in the Commission is the line intended and declared by the King in his Council.

Q. But the question before us now is of the *exterior boundary line*—this is an *interior dividing line*; what bearing has it upon the question?

A. None whatever, so far as the King was concerned. General Clarke changed the Royal phraseology, and so is supposed to have legislated the boundaries of Ontario to the Pacific Ocean. He is supposed to have done what the King, his master, could not do; viz., to have extended the limits of the Province beyond the line enacted by Parliament in 1774.

By Mr. BACON.

Q.—You have stated that the arbitrators based their award on the Order in Council of 1791. On what authority do you state this?

A.—On the authority of Sir Francis Hincks lecture (page 423 Ont. Bound. Doc.); he says "in accordance with the Statute of 1791, an Order in Council was passed authorising the proclamation, which fixed the north eastern boundary at the boundary line of Hudson's Bay and that I hold to be a sufficient description of the shore."

Q.—But on page 419 he says "the arbitrators were of opinion that on this point (the division) the judgment of the Court delivered at Quebec in 1818 was correct, and consequently that the boundaries of Ontario must be limited to those of the Province of Quebec, as defined by the Act of 1774."

A.—I cannot reconcile the two statements. In going to the shore of Hudson's Bay, beyond question, the arbitrators were not following the Satute which says: "Southern boundary of the *"territory granted to the Merchants Adventurers."* The first statement accounts for the result of the award, the second does not. I am confirmed in my view by the Lieut.-Governor of Ontario's despatch, urging the recognition of the award upon the Dominion Government. He says, "in a lecture delivered by Sir Francis Hincks on the 6th of May, 1881, he states that "the arbitrators were guided in their decision solely by Acts of Parliament, Proclamations authorised by Orders in Council on "the authority of Acts of Parliament and international "treaties." (Ont. Bound. Doc., p. 475.)

E.

MONS. CUGNET examined.

By Mr. THIERRY.

Q.—You have, I believe, given much attention to matters connected with the History of Canada?

A.—It has been the study of my life.

Q.—Can you tell us when, and by whom, Hudson's Bay was discovered?

A.—There have been various opinions. All concur that it was discovered by an English ship. It has been asserted that Cabot discovered it for Henry VIII. in 1517; others ascribe the discovery to Frobisher; others to Davis. For my own part, I believe with Champlain that it was discovered by Henry Hudson in 1610. Champlain was an exceedingly well informed man, besides being a most experienced sailor. Writing in 1632, he states that Cabot visited Labrador, but that Hudson discovered the Straits in latitude 63, and he adds that it may be seen by the map published in England. There is no reason to disturb the long received opinion that Hudson was the discoverer of the Straits and Bay which bear his name. In Champlain's Voyages, published in 1613, the Straits and that portion of the Bay now called James' Bay are laid down upon his map, and on an island at the South of James Bay is given "bay where Hudson did wente".

probably a misprint for winter. He also lays down "Salisberis Islandt" where are Salisbury Islands now, and "Holde with hoope," at Hope's Advance Bay. All the names given on Champlain's maps are English names, and while he vindicates with much warmth the French claims to the South—the St. Lawrence and Acadia—he concedes the English claims to the North, and to Hudson's Bay.

Q.—Did the English follow up their discoveries?

A.—Yes; in 1612 Sir Thomas Button was sent out by the Prince of Wales. He explored the whole West coast of the Bay. He wintered at Nelson River, which he named after the captain of one of his ships who died there. He called the country about the present Albany River, New South Wales, and that near the present Churchill, New North Wales. He erected a cross with the arms of England, and took formal possession of the country in the manner usual in those days. Other English sailors succeeded, and in 1631, Fox named nearly every point of land along the shores of the Bay. James about the same time wintered at James Bay, to which he gave his name.

Q.—Is there any record of French vessels having visited the Bay in those early times?

A.—None whatever, until they went to destroy the English forts. A story was invented, when the French in Canada commenced to make claims there, that Jean Bourdon from Quebec, visited the Bay in 1656; but this is disproved by the fact on record that he went only as far North as 55 degrees.

Q.—When did the French commence to lay claim to the Bay?

A.—After they heard that the English had settled there. They were afraid of competition in the fur trade.

Q.—When did the French from Canada first visit the Bay?

A.—The first Frenchmen to reach the Bay were Albanel and St. Simon, and in 1671 they took formal possession on the shores of the Bay. The English had taken possession by repeated acts in various parts of the Bay, from the time of Button to that of Fox and James; and when Albanel reached there they were settled at Rupert's River.

Q.—When did the English first settle there?

A.—In 1667, Gillam, sent out by a company of London merchants, built a fort at Rupert's River, and in 1669 Newland, acting for the same company, built a fort at Nelson River. In 1670 this company was chartered as the Hudson's Bay Company.

Q.—Had not two Canadians—Radisson and Groselliers—visited London before Gillam's expedition sailed?

A.—Yes. They knew by practical experience the value of the fur trade. They sailed with Gillam.

By the CHAIRMAN.

Q.—Would not this fact, if settled, weaken in some degree the credit of the English as the first settlers?

A.—Certainly not. They could not teach the English anything about the Bay, for, as I have stated before, the English had long previously visited it and had named every point of land, bay, and river on its Eastern, Southern, and Western shore. They had formally taken possession of it. The Canadians might have stimulated the desire of the English to settle there permanently, but the expedition was English, sent out by London merchants, in English ships, with an English captain, and under the English flag. I may quote as an answer the quaintly indignant words of Champlain:—"Posons le cas qu'un Espagnol ou autre estrange ait decouvert quelques terres et richesses aux despens du Roy de France, scavoir si les Espagnols ou autres estrangers s'attribueroient les decouvertes et richesses pour estre l'entrepreneur Espagnol ou estrange: non il n'y a pas de raison, elles seroient tousjours de France."

By MR. THIERS.

Q.—But had not the French visited the Bay overland prior to Gillam's settlement?

A.—No. After the French heard from the Indians that English ships had been seen in the Bay they sent Albanel and St. Simon, who first reached the Bay from Canada, and formally took possession of it in the King's name. That was in 1671.

Q.—Then, in your opinion, if the title to Hudson's Bay depends upon discovery, the English were first, and if upon settlement, the English were first?

A.—Beyond all doubt the English settlement of 1667 antedated any settlement by the French in the whole basin of Hudson's Bay; and its discovery was only two years after the foundation of Quebec in 1608 by Champlain. Therefore it is not important to inquire into the explorations of Nicolet, Radisson,

and others, because nobody pretends that they made any settlements prior to 1667. If it be argued that they visited some portion of the Hudson's Bay basin prior to 1667 no one ever pretended that any such visits ante-dated the visits of Hudson and Button in 1610-12, or of Fox and James. The whole of the facts are carefully and succinctly stated in Notes G. to L. of Mr. Justice Ramsay's Report to the Dominion Government.

By MR. SHAKSPEARE.

Q.—Have you read Mr. Mills' Report on this point?

A.—Yes; the value of the statements of Mr. Mills may be measured by his confident assertion that Jean Bourdon went to Hudson's Bay in 1656 from Quebec in a barque of 30 tons, and took possession in the King's name.

Q.—You seem to be of opinion that these French claims were afterthoughts, when they began to fear the influence of England on the fur trade of the North?

A.—I am. The pretensions of the French to Hudson's Bay never had any foundation. The English never admitted them, hence the dispute about the word "restore" in the Treaty of Utrecht. Champlain knew of Hudson's Bay only from English sources. The most cursory inspection of any old map prior to 1670 will show the whole nomenclature to be English.

Q.—Have you any such maps?

A.—Yes. I produce a map published at Amsterdam by N. Visscher, a geographer of eminence. It is dedicated to the Dutch West India Company. It is not dated, but Mr. Muller gives the date as about 1670, while Mr. Faribault puts it at 1642. Anyway the lakes West of Niagara are not distinguished, but a large sheet of water is given undefined on the West—unquestionably Lakes Huron and Michigan confused together; and yet on this map Hudson's Bay is given with much accuracy, and every name on it is English.

By the CHAIRMAN.

Q.—But that is a Dutch map, have you any authentic French maps which support your views?

A.—Yes. I produce a map published in Paris "avec privilege du Roy," and dated 1656. It is drawn by N. Sanson d'Abbeville Geographe ordinaire du Roy. In this map very little of Lake

Superior is shown past the Sault St. Marie. The rest of the lake is left indefinite, as unknown. Lakes Michigan and Huron are confused. The map is one coloured at that time along the dividing lines marking the boundaries of each nation. Now, although it is seen at once that Lake Superior past the Sault was unknown, all the names on Hudson's Bay are English names.

Q.—Are the boundaries then laid down on this map between the English and French possessions?

A.—Yes; the Northern boundary of Canada which the arbitrators of 1878 could not find is laid down in 1656 on this authentic map upon the height of land which separates the waters flowing into Hudson's Bay from those flowing into the St. Lawrence.

By Mr. THIERS.

Q.—What are the names given to the territories of each power?

A.—South of the height of land is "Le Canada ou La Nouvelle France"—North of the height of land is "Nouvelle Bretagne" and "New South Wales."

Q.—This settles the question before 1670; but are not the later maps different?

A.—Yes. After the English settled at Hudson's Bay, the French maps changed. I have another map of Sanson's similar to the preceding, but I have two others of 1695 and 1696, published after Sanson the elder's death, in which Canada extends far to the North, and includes all Hudson's Bay. These maps corroborate Mr. Justice Ramsay's conclusions that it was not until the English settled there that the French made any claims upon Hudson's Bay. And, moreover, they establish the height of land as the Northern boundary of Canada.

Q.—You seem to attach much value to Sanson's map; upon what grounds?

A.—Because of the position Nicholas Sanson held at Court. He was a man of distinguished ability, and was presented to Richelieu when 27 years of age. He was rapidly advanced, made Geographer to the King, and was Instructor in Geography to Louis XIV. He became Engineer for the King in Picardy, and was created Conseiller d'Etat. When at Ponthieu the King stayed at his house. He was the master of Duval and Guillaumed' P'Isle. I attach for these reasons much importance to this map, for if

France, in 1656 had claimed Northward of the height of land he would have known it, and would not have dared to insert such a boundary or to have asked a Royal privilege for a map which diminished his master's claims. I consider this map decides the question of the boundary of Canada on the North. This M. Sanson died in 1667, leaving sons who issued maps of later dates, bearing his name, with the boundaries changed as the French claims varied. Some of his maps were also re-issued by Jaillot after his death.

By M. PERSONNE DE TEMISCAMANGUE.

Q.—It was supposed, in the Honorable Mr. Cauchon's paper, to be probable that some Frenchman reached the shore of Hudson's Bay prior to 1610?

A.—I wonder that suppositions of that sort should find place in serious documents. Spanish Basques also traded to Tadoussac, and he might as easily suppose some Spaniard visited Hudson's Bay. Champlain's voyages relate all the occurrences on the coast at that time. He was keenly alive to all that transpired, and worked with Pontgravé, Chauvin and all who frequented Canadian waters.

Q.—But Mr. Cauchon thinks they were *Coueurs du bois*?

A.—He was writing a brief. He knew better. A sailor visiting a coast in summer for trade with the natives is not a *Coureur du bois*. The *Coueurs du bois* came fifty years later, and were so called because they left their farms to live with the Indians contrary to the King's edicts.

By the CHAIRMAN.

Q.—The outline of Hudson's Bay on the map you produce is not correct.

A.—It could not be at that early date; Button's Bay is drawn far south of its real place. The essential point shown is that the French laid no claim to any part of the Bay in 1656, nor to the streams which fall into it. The whole south coast is coloured red. The Severn river had received its name, and the shore there is coloured red. The dividing line is not drawn so far as the head waters of the Severn, because the French discoveries had not gone past the Sault. It is evident, however, that the drainage basin

of the Severn was taken to be English territory. That settles the question of the disputed territory. The principle of the map is clear.

Q.—Is the colouring contemporaneous with the date of the map?

A.—Beyond doubt. It follows the engraved line and corresponds with a smaller copy of the same map purchased in Paris at a different time and in a different place. In both, red is adopted as the English colour.

F.

MR. TWISS examined.

By the CHAIRMAN.

Q.—You have I believe much familiarity with the literature of boundary questions in America?

A.—Yes.

Q.—Will you give the Committee the benefit of your opinion upon the documents submitted in the question of the Ontario boundary?

A.—The first remark which occurs to me is that the case has been overlaid with such a mass of matter that the points of real importance have been covered over. The Dominion was in possession and the case was always thought very clear. The height of land was laid down as the boundary on the North on all the maps, and the children were taught it in the schools. So far from questioning that boundary, the Province of Ontario, admitted it in what is called the Robinson treaty.

Q.—How was all the extraneous matter first brought in?

A.—By the Dominion Government in its attempts to force the hand of the Hudson's Bay Company. To belittle the rights of the Company, the most extravagant and absurd claims were made to extend the ancient limits of the Province of Quebec, of which Ontario is the present representative in the West. The Dominion always refused to submit its claims to legal award, but reiterated them until the North-west territories were acquired by purchase, acknowledging by the purchase the title which it disputed. All

the arguments against the Hudson's Bay claims were first formulated in detail in Honorable Mr. Cauchon's Report presented in 1857.

Q.—What do you consider to be the important documents in the discussion?

A.—Two Statutes—those of 1774 and 1791—as that of 1791 did not refer to the boundaries, practically only one Statute, that of 1774, has to be considered. One Commission, Order in Council and Proclamation, all in 1791, and the Charter of the Hudson's Bay Company.

Q.—Are not the Treaties of Peace with the United States important?

A.—Not as regards the limits of a Province fixed by Parliament, to add to it. Portions of such a province might be given up, but if the Crown of England acquired new territory it would not necessarily belong to the adjacent Province if it was outside the fixed limits.

By Mr. BERGHAUS.

Q.—What bearing has the treaty of Utrecht upon the question?

A.—I think the question can be easily decided without reference to that treaty at all. The Statute of 1774, which is admitted to contain the description of the boundaries of the Province of Quebec, states that the northern boundary of the Province is the southern boundary of the territory *granted* to the Hudson's Bay Company. There was but one grant; viz., the Charter of 1670, therefore the boundary of 1670 on the south is the boundary of 1774. You must consider the territorial description of the charter as forming an integral part of the Statute. What was done in the territory in the period between 1670 and 1774 has no legal bearing upon the question.

Q.—That may be; but yet were not the English claims in 1714 and 1783 founded on the Hudson's Bay Company's rights under the charter?

A.—Yes. The British Government, in all its negotiations with France and the United States, has uniformly claimed as Hudson's Bay territory all the basin drained by the rivers flowing into Hudson's Bay. The French from Canada invaded and held for a time portions of this territory. The effect of the treaty of Utrecht is stated by Sir Travers Twiss, (*Oregon Question*, p. 210.)

as follows: "By the 10th article, the French King agreed to
 "restore to the Queen of Great Britain, to be possessed in full
 "right forever, the Bay and Straits of Hudson, together with all
 "lands, seas, sea-coasts, rivers and places, situate in the said Bay
 "and Straits, and which belong thereto; no tracts of land or sea
 "being excepted, which are at present possessed by the subjects of
 "France. The only question, therefore, for the commissioners to
 "settle were the limits of the Bay and Straits of Hudson coast-
 "wards, on the side of the French province of Canada, as all
 "the country drained by streams into the Bay and Straits of
 "Hudson were by the terms of the treaty recognized to be part
 "of the possessions of Great Britain."

Q.—But did not this treaty force from the French King an admission of the prior right of the English to the Hudson's Bay Basin by discovery and settlement?

A.—Yes. The adoption of the word "restore," insisted on by the English instead of "cede," contains the admission that the boundaries of Canada properly and originally extended only to the watershed, and that the French occupation of portions of the Hudson's Bay Basin was an invasion. In that respect it elucidates the statute of 1774, if that requires elucidation, which is clear already.

G.

MR. RUSSELL, Editor of the WEPYIAG REVIEW examined.

By the CHAIRMAN.

Q.—Have you given any special attention to the different documents such, as reports and statements, issued during the controversy between the Dominion and the Province of Ontario concerning their respective boundaries?

A.—Yes; in conducting my paper I have had occasion to examine them all for review purposes.

Q.—As the report of the Honorable David Mills was the first published, will you please state your views as to its historical accuracy?

A.—I do not think that Mr. Mills pretended at any time to great historical accuracy. He was engaged to make the best possible plea for extending the boundary of Ontario as far west

as possible. In doing this he made large use of the material supplied by Mr. Cauchon in the dispute between the Dominion and the Hudson's Bay Company. Everything available had been collected to invalidate the charter of the Hudson's Bay Company and to limit its territory. The Dominion failed to break down the Company's charter and would not take legal action to test its boundaries. Eventually the rights of the Company were acquired by purchase, but the material of attack remained unused, and Mr. Mills applied it to the support of the Ontario claims with very great skill. He had a very short time in which to prepare his book. If he had studied the subject longer, he would have been more accurate.

Q.—But Mr. Mills made original researches?

A.—Yes. And he made some statements more original than accurate. He states for instance that Hudson's Bay was discovered by Sebastian Cabot in 1517. He adds in a foot note that the company extended the name Hudson's Bay over that part called Button's Bay, thus extending the limits embraced by their charter, whereas the grant in the charter does not mention Hudson's Bay by name, but *all* the bays, &c., within Hudson's straits. As for the alterations of the names in the maps, the company could not have influenced all the geographers of Europe. The statements made at page 96 that the charter referred no farther back than to Gillam's voyage in 1667, and that it asserted only a conditional right in the King are incorrect, in the face of the maps of the bay and the language of the charter, and the assertion that Bourdon visited the Bay in 1656 is directly contradicted by the contemporaneous account given in the *Relations des Jesuites*. The whole of the statements in this part of the report are based upon *ex parte* evidence, long subsequent to the dates of the asserted occurrences. These the English Government at all times refused to admit as correct. They are skilfully woven together to create a false impression that the French were on the Bay before the English, and thus to extend Canada to the shores of the Bay.

By Mr. THIERRY.

Q.—Do you think that Mr. Mills is correct in his assertion that Louisiana was a dependency of Canada?

A.—He does not say that. He says that Crozat's charter declared it to be a dependency of Canada, and then leaves it to be

inferred by the reader. He leads the reader also to make the inference that at the conquest, the country of the Illinois formed part of Canada.

Q.—Was not that the fact?

A.—The contrary will appear on reference to "The present state of the European Settlements on the Mississippi, by Captain Philip Pitman"; London, 1770. He was Royal Engineer and Surveyor in Louisiana for five years previous to that date, and his report was made to the Secretary of State. Mr. Mills gives in appendix G to his volume extracts from Captain Pitman's report, but he gives only such extracts as suit. The following, which will be found at page 52, under the heading "Of the Government of the country of the Illinois when belonging to the French," settles the question.

"This country, when in possession of the French, was governed by a military officer, called the Major-Commandant, who was appointed by the Governor of New Orleans. * * * * * Capital offences were tried by the Council at New Orleans."

Q.—What could be gained by such a suppression?

A.—The "Illinois" was bounded on the West by the Mississippi, on the South by the Ohio, on the North by the Illinois river, and on the East by the Wabash and the Miamis. If, therefore, it could be made out that the "Illinois" formed part of Canada at the time of the conquest, it would move the boundary of Canada to the Mississippi on the West and thus give more colour to the theory that the Northward line of the Statute of 1774 was a line along the Mississippi. As a matter of fact, the western boundary of French Canada in 1760 was a North-East line leaning about as far to the East as the line of the Mississippi would lean to the West. That the Illinois was not part of Canada is clear also from General Gage's Proclamation of 1764 given at p. 13 of the Dominion Report. It distinguishes very decidedly between the two countries and states that the inhabitants of the Illinois were to have the same liberty of religion as had been "granted to the King's subjects in Canada."

Q.—Does not Mr. Mills dwell much upon the early French explorers in the West?

A.—Yes, and often inaccurately. At p. 72, he says that Du L'hut explored the country between Lake Superior and the Mississippi in 1678. Du L'hut left Quebec for the West in 1678

and in 1680 rescued Hennepin from the Sioux near the Mississippi. So far Mr. Mills is correct, but at p. 83 he says that the North-West country was explored by Du L'hut in 1671. In 1674, Du L'hut was at the battle of Senef in Belgium. He did not start for the West until 1678. He is entirely wrong about the *Coueurs du Bois*, who he asserts to be agents of the Government, whereas edict after edict was launched against them as may be seen from Parkman and the *Edits et Ordonnances*. The whole statement on p. 2 is wrong. Parkman is correct in calling them a lawless body of men.

Q.—What are the precise limits claimed by Mr. Mills?

A.—It is not easy to say. In short, he seems to think that only the Province of Quebec is defined and all the rest of British America, west of the Ottawa, is Ontario. At p. 88, he is certain that "they extend to the Rocky Mountains *if not to the Pacific*." Thus British Columbia and Vancouver's Island are in danger of absorption. Manitoba was, he thinks, beyond question in Ontario territory. These claims show that the report does not really purport to be historically accurate. The same absurd claim was embodied in a Resolution introduced by Mr. W. McD. Dawson on Aug. 13, 1858, into the Legislative Assembly of Canada. "Resolved, that Canada, or New France as originally known and recognised by European Nations had no limit towards the north except the Frozen Sea, and no limit towards the west except the Pacific Ocean." The resolution was lost, 23 to 42.

Q.—But Mr. Dawson does not hold these views now.

A.—No. He raises new distinctions, and in subtle ways escapes his early conclusions. His repentance was thorough, for the boundaries of Ontario he now supposes to be at the Sault St. Marie.

By Mr. SHAKESPEARE.

Q.—But Mr. Mills' book is well written, is it not?

A.—Yes. He displays great literary skill in managing his materials. He has read a great deal of interesting matter and argues upon a private letter or an Act of Parliament with equal confidence. Sometimes the act interprets the letter and sometimes the letter interprets the act. His authorities are miscellaneous. Lahontan, and the work cited as "Life of Cabot" are doubtful supports for his statements about Hudson's Bay. His report is a

work of imagination of high rank in its class. It is well printed and creditably put out with maps. It contains many useful documents in the appendix.

Q.—The volume of Documents put out by the Ontario government contained many valuable documents; did it not?

A.—As a record of the case got up by the Dominion against the Hudson's Bay Company it is important. It turns the old weapons of the Dominion against their inventors. It contains also the proceedings before the Arbitrators printed in better style than in the Dominion report. It is nicely and conveniently arranged with a good table of contents. The Report of the Dominion Committee is a badly got up volume poor in paper and type, and badly arranged. The documents it contains are most valuable, much more so than those in the other volumes, but there is no proper index, and there are no proper headings. It is tiresome to read and inconvenient for reference, besides, it contains no maps. I cannot remember a volume containing so much interesting matter so badly displayed.

Q.—In speaking of interesting, valuable, and important matter, do you mean as bearing on the Boundary question?

A.—No—as bearing on questions of history. The boundary question is wrapped up in a very few documents. The most of the three volumes consist of papers illustrating side issues. In reading Mr. Mills book, one is transported back into the last century and learns more of the feelings, wishes and intentions of the people who lived then than perhaps they knew themselves.

H.

Mr. BANCROFT examined.

By the CHAIRMAN.

Q.—We have been informed that you entertain views concerning the Western boundary of the ancient Province of Quebec which differ from any yet advocated before this committee?

A.—They are not altogether novel. In principle, they are founded on the views of the Hon. David Mills.

Q.—I thought your line was a Northeast line. Mr. Mills' boundary was to the Northwest along the Mississippi?

A.—It is in *method* that I agree with Mr. Mills. I approve of his mode of interpretation. I believe that, by combining Mr. Mills' method and Mr. Dawson's, the true solution may be found.

Q.—That is novel. Pray explain how you reconcile them.

A.—Both Mr. Mills and Mr. Dawson hold extreme views as to the power of the King to alter boundaries. So do I. I adopt Mr. Mills statements as to the Royal Prerogative, and add to it Mr. Dawson's fact that the Commissions to Lord Durham and Lord Elgin placed the western boundary of Ontario at the entrance to Lake Superior. The officials who drew these commissions no doubt had information before them which led them to a true interpretation of the Statute of 1774. The true boundary of Ontario has not been altered since Lord Elgin's time.

Q.—But what is your boundary?

A.—My boundary is the full extent of Canada on the South-west—plus the territory of the Illinois, which was added to it as one of its dependencies, at the treaty of peace with France.

Q.—How does the line run?

A.—From the junction of the Ohio and Mississippi northwards, along the Illinois river northeastwards, to the carrying place now Chicago, northwards up Lake Michigan to the Sault St. Marie and then to the height of land.

By Mr. SHERIDAN.

Q.—You are giving a strange twist to the line *northwards* of the Act?

A.—I am not twisting it so far as Mr. Mills or the arbitrators. My line has more north in it than either; and, in adopting it, I am following Mr. Mills' method of "interpretation by contemporaneous facts." It is moreover the only reasonable line, for it is the line which includes all the settlements, and leaves out the independent Indian tribes. If any one will look at the Arbitrators line on the map and call it a line *northwards*, he will prove himself fit for a lunatic asylum. It is as crooked all over as a dog's hind leg. It runs wild over all points of the compass and zig-zags in every possible direction. I respectfully object to the word "*twist*" as applied to me. I appeal to the chair.

Q.—I withdraw it. Pray explain, however, why you adopted this line?

A.—An attentive perusal of the act convinced me, as it did

Mr. Mills, that its object was to include all the French settlements both in Canada and in the territory called the Illinois. I read, as he did, the preamble; and I found that its object was to extend the French law and to establish the Roman Catholic religion over "*several colonies and settlements*" of Frenchmen not included in the previous limits. My line takes in all these people, all these settlements. I found also that the act was not intended to extend the "*Coutume de Paris*" over the Outagamis, the Mascoutins, the Winnebagos, the Chippeweyans, the Sac, the Foxes, and the other savages north of the Illinois. In the territory north of the that river, there were no Europeans at all. These Indians were not, as the act would be made to say, remaining there under the faith of the treaty. It was the home of those wild tribes, and it was the Illinois French who were so remaining. And therefore it was the Canadian and Illinois French alone who were within the purview of the Act.

Q.—Why do you distinguish between the Canadian and Illinois French? Illinois was part of Canada.

A.—At first it was, at its discovery; but Charlevoix says (vol. 2 p. 432) that, by an *Arrêt* of the 27th Sept., 1717, it was detached from the government of New France and added to that of Louisiana.

Q.—Did it remain so until the Conquest?

A.—It was this very act of 1774 which reunited it. Capt. Pitman portions of whose work are quoted by Mr. Mills, says specifically that the Illinois when in possession of the French was governed from New Orleans. The History of the British Dominions, published in 1773, says the same. Governor Pownell, in his plan of operations 1756, specifies all the settlements in the Illinois, with their garrisons, as being in Louisiana. He gives the boundaries of the Illinois from the Wabash to the Mississippi and Illinois rivers, in which all the French authorities concur.

Q.—Then this country was no part of Canada at the cession?

A.—Certainly not. The Marquis de Vaudreuil spoke the truth. Canada extended to the carrying place of the Wabash and to that of the Illinois. (See Smith's Canada, vol. i., p. 377.)

Q.—Why was it ceded then?

A.—It was ceded as one of the *dependencies* of Canada. Mr. Dawson is right, although late about it, in drawing the distinction between Canada and its dependencies. General Gage issued

a distinct proclamation to the Illinois, stating that the rights of the inhabitants would be protected as the rights of the Canadians had been.

Q.—How do you account for the fact that while your line includes only Canada and the Illinois, Governor Carleton's commission extends to the North-west along the Mississippi?

A.—Very easily. Governor Carleton's Commission ran to the full limit claimed by Great Britain. The Parliament provided civil government for the portion settled by the French. It is not reasonable to suppose that in the teeth of the opposition in the Commons and in the English colonies, and in spite of the outcry against the Roman Catholic religion, Parliament intended to extend it to the far unknown territories. Parliament intended only to quiet the minds of the French. It was not anxious about the religion of the Sacs, Foxes and Winnebagos.

By the CHAIRMAN.

Q.—Your views seem to be supported by the Commissions taken alone; and by general considerations drawn from contemporaneous history. The maps are, however, against you.

A.—On the contrary the maps of the period support my views. I refer you to Peter Bell's map, 1772 (No. 4 in Mr. Mills' book), where you will find my line drawn; to Jeffrey's map (No. 3 Mr. Mills' book), where the line is further North along the Wisconsin, but where the country North of Wisconsin, and East of the Mississippi is called Louisiana. I produce the map by Huske, dedicated to one of the Lords of the Admiralty, in which my line is drawn and coloured. The date of this is 1770. It is prefixed to Dr. Douglas' book. I produce the map in Smollett's History of England, 1761; Lodge's map of 1780; Ridge's map of 1763; the maps in the Universal Magazine of 1761, all of which have a dotted line along the boundary I have advocated. As for my statements concerning Louisiana I refer you to the map in LeClerc's *Nouvelle Relation de la Gaspesie*, 1692, to Robert de Vaugondy's map, 1750. I hold it to be beyond cavil that the country between the Lakes and the Mississippi North of the Illinois was not part of New France at the conquest, and that the Illinois country was separated from New France in 1717, as Charlevoix says. I maintain that the Mar-

quis de Vaudreuil knew the extent of the country he administered better than anyone else.

Q.—I observe that on some of these maps that line is called boundary by treaty. Is that the treaty of 1763?

A.—No. It refers to a treaty made or supposed to be made by the English with the Iroquois, by which the territory was ceded to the English in trust for the Iroquois previous to the conquest of Canada. The Iroquois claimed it as their country conquered from all the Indian nations. Outside that line were the unconquered savage tribes, free from all alliances and entanglement with French and Colonial politics. They were the nations which the French Government at the Treaty wished to consider as neutral. It would have been as reasonable to extend the "Coutume de Paris" over them as it would be now to extend the Insolvent Laws over the Esquimaux.

By MR. BACON.

Q.—I understand you then to mean that the Act of 1774 was framed to include Canada and the Illinois?

A.—Yes; and the line went North to the height of land at the Sault St. Marie, because there were no French settlements West of that point.

Q.—Then do you suppose that Great Britain abandoned all the territory West?

A.—By no means. The rest was Indian territories, dependencies of Canada, and General Carleton's Commission took it in. It is irrational to read into the act the words "along the Mississippi," and thus take in all that country. The words along the Illinois should be read into the Act according to the purport expressed in the preamble.

By MR. THIERRY.

Q.—Do you find any special mention of this line at the time of the act?

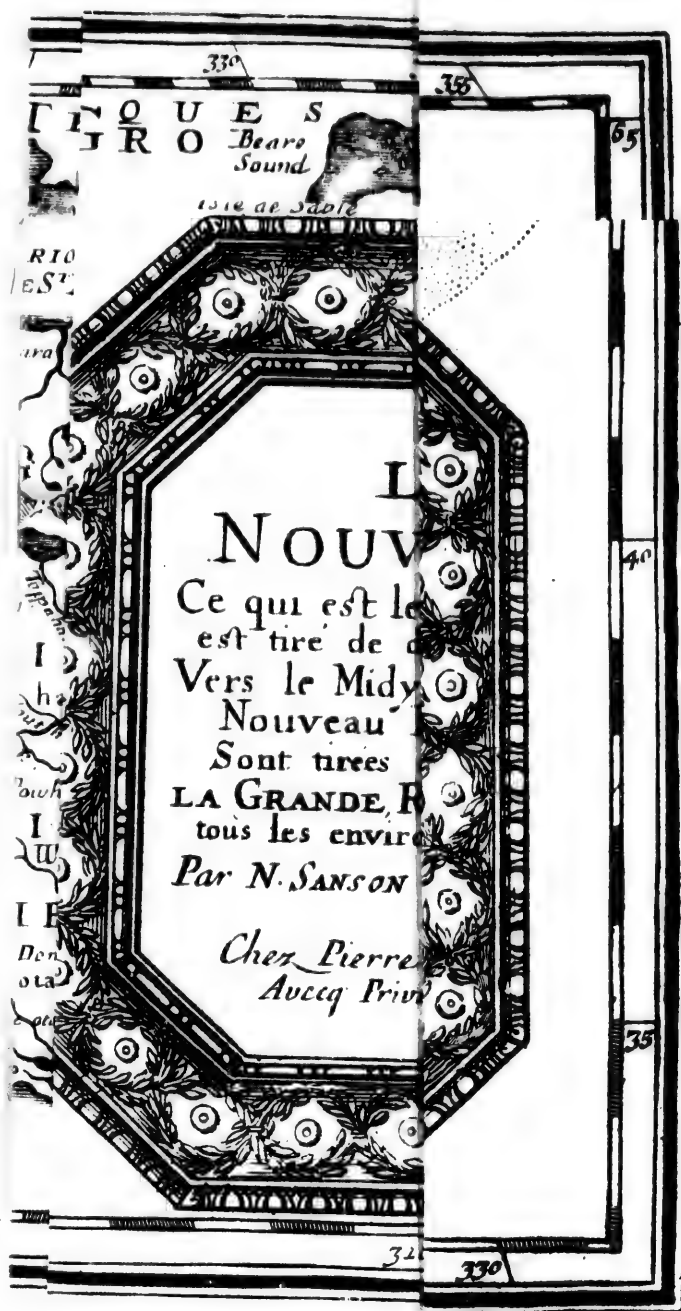
A.—Yes; in Mr. Mills' Book (p. 18) I find that Col. Croghan, the Deputy Superintendent of Indian Affairs, advocated the occupation by posts of this line; viz., from the mouth of the Ohio to the head of the Illinois; in order to prevent the French on the West of the Mississippi from drawing away the trade of the Indians between the Mississippi and the Lakes. Throughout the volume

will be found references to the policy of the British Government in reserving the Indian territories from settlement. These territories are rightly called by Mr. Dawson "dependencies of Canada" in the terms of the Treaty; and, in later years, when the disorders among the fur traders arose, Acts of Parliament were passed providing for the administration of justice there. This policy was plainly expressed in the Proclamation of 1763, erecting the first Province of Quebec. It cannot be supposed that in 1774 all western boundaries were swept away. That act specifically extended the boundaries. Attorney-General Thurlow stated, (p. 25 Cavendish) in the debate on the act of 1774, that the whole of Canada was not intended to be included in the Act. That does not look like extending the boundaries to the Rocky Mountains. He was in a position to know.

Q.—Your argument is very plausible, and has the merit of novelty.

A.—I think it is conclusive, and the more it is considered the more it will grow in favour. The merit of novelty I must disclaim. It is the union of Mr. Dawson's practical knowledge with Mr. Mills' literary knowledge that renders the argument irresistible. The merit of this line is that it commences from the junction of the Ohio and Mississippi and takes in the whole territory northward, where the French language, the Roman Catholic religion, and the French civil law had effected any lodgment. In the face of the preamble to the act of 1774, it is absurd to suppose that the British Parliament, in which a Roman Catholic could not sit, intended to initiate a French and Roman Catholic system of polity over the enormous unexplored territory to the North-West. Mr. Mills' system is good, but he pushes it too far, as is often the case with men of genius. Hence the necessity of checking his flights by the severer logic of Mr. Dawson's later years—but there is no novelty in my theory excepting that of combination. It is a coalition theory.

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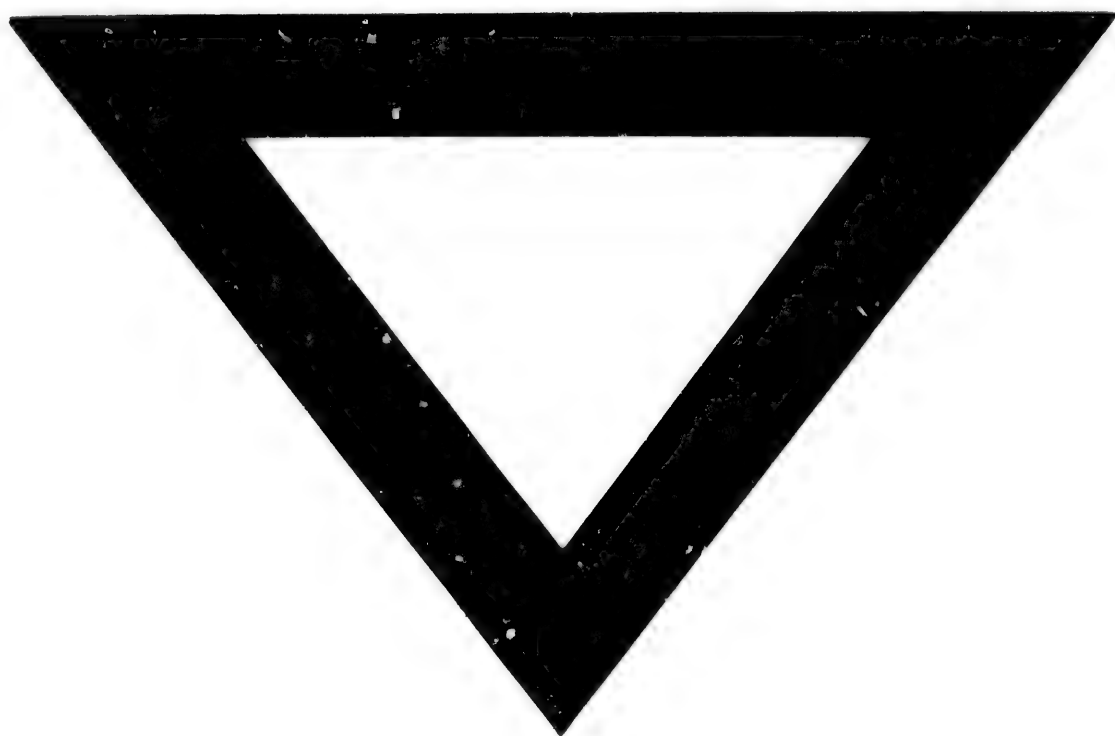


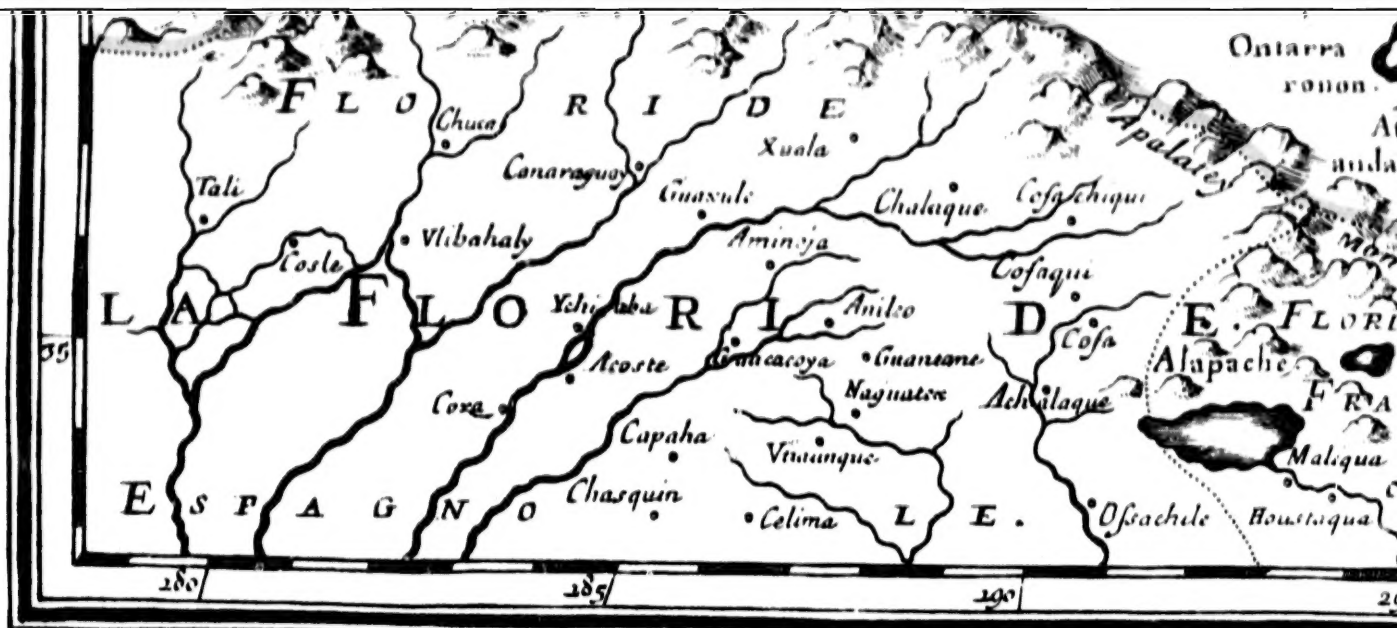














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est tire de divers
Vers le Midy les
Nouveau Pay
Sont tirees de
LA GRANDE RIVIERE
tous les environs
Par N. SANSON d'A

*Chez Pierre M
Avecq Privilege*

est tiré de diverses Relations des Anglois, Danois, &c.
Vers le Midy les Costes de Virginie, Nouv^{lle} Suede,
Nouveau Pays Bas, et Nouvelle Angleterre
Sont tirées de celles des Anglois, Hollandois, &c..
A GRANDE RIVIERE DE CANADA ou de **S^T LAURENS**, et
tous les environs sont suivant les Relations des François.
Par **N. SANSON** d'Abbeville Geographe ordinaire du Roy.

A PARIS.

Chez *Pierre Mariette Rue S^t Jacques à l'Esperance*
Avecq Privilege du Roy, pour vingt Ans.

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